

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 400

INTRODUCER: Senator Wise

SUBJECT: Treatment-based Drug Court Programs

DATE: February 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill expands postadjudicatory treatment-based drug court programs as a sentencing option by:

- increasing the total number of sentencing points an offender may have accumulated and still qualify for the program,
- allowing courts to consider including offenders who have prior violent felony offenses for the program, and
- providing that offenders who violate his or her probation or community control for any reason may be admitted to the program.

This bill could have a positive fiscal impact on the Department of Corrections resulting from fewer new commitments to state prison.

This bill substantially amends the following sections of the Florida Statutes: 397.334, 921.0026, 948.01, 948.06, and 948.20.

II. Present Situation:

Postadjudicatory drug courts are designed to divert drug-addicted offenders from the prison system by providing supervised community treatment services in lieu of incarceration.

Drug Court Overview

Section 397.334, F.S., authorizes the establishment of drug courts, and s. 948.08, Florida Statutes, mandates the type of offenders that *pretrial* drug courts may serve.

In 2009, *postadjudicatory* drug courts were targeted by the Legislature for definition and expansion. The expansion was largely due to the documented success of the programs in diverting offenders from prison. In March of 2009, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reported that, based on available data, Florida's postadjudicatory drug courts appeared to reduce prison admissions among offenders who successfully complete the program.

OPPAGA analyzed prison admissions for a group of 674 offenders who graduated from post-adjudicatory drug courts in 2004 and compared their subsequent prison admissions to a similar group of 8,443 offenders who were sentenced to drug offender probation. Over a three-year period, offenders who successfully completed drug court were 80 percent less likely to go to prison than the matched comparison group. Forty-nine percent of those who did not graduate from the program were incarcerated during the three-year follow-up period.¹

According to the report, both the programs' treatment and supervision components are significant factors in reducing prison admissions.²

Ideally, drug courts operate as special court dockets that hear cases involving drug addicted offenders. Judges order participating offenders to attend community treatment programs under close supervision by the court. The participant undergoes an intensive regimen of substance abuse treatment, case management, drug testing, and monitoring. Although treatment is tailored to each offender's individual substance abuse treatment needs, drug court programs generally require at least one year of intensive individual and/or group substance abuse treatment.

Section 397.334, F.S., sets forth the following strategy and principles for the operation of Florida's drug courts:

- (4) The treatment-based drug court programs shall include therapeutic jurisprudence principles and adhere to the following 10 key components, recognized by the Drug Courts Program Office of the Office of Justice Programs of the United States Department of Justice and adopted by the Florida Supreme Court Treatment-Based Drug Court Steering Committee:
 - (a) Drug court programs integrate alcohol and other drug treatment services with justice system case processing.
 - (b) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
 - (c) Eligible participants are identified early and promptly placed in the drug court program.
 - (d) Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

¹ OPPAGA Report 09-13, March 2009, *State's Drug Courts Could Expand to Target Prison-bound Adult Offenders*.

² *Id.*

- (e) Abstinence is monitored by frequent testing for alcohol and other drugs.
- (f) A coordinated strategy governs drug court program responses to participants' compliance.
- (g) Ongoing judicial interaction with each drug court program participant is essential.
- (h) Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.
- (i) Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.
- (j) Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

Participants in drug court must comply with more demanding requirements than those offenders serving regular probation. In addition to reporting to court several times each month, drug court participants receive regular drug testing, individual and group substance abuse treatment and counseling, and are monitored by both a probation officer and drug court case manager. Most drug courts also provide ancillary services such as mental health treatment, trauma and family therapy, and job skills training to increase the probability of participants' success.

Drug courts generally use graduated sanctions when offenders violate program requirements by such actions as testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions may include mandatory community service, extended probation, or jail time.

Sentencing Points as Sentencing Mechanism

The Criminal Punishment Code applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.³ Each non-capital felony offense is assigned a level ranking that reflects its seriousness.⁴ There are ten levels, and Level 10 is the most serious level.⁵ The primary offense, additional offenses, and prior offenses are assigned level rankings.⁶ Points accrue based on the offense level. The higher the level, the greater the number of points. The primary offense accrues more points than an additional or prior offense of the same felony degree. Points may also accrue or be multiplied based on factors such as victim injury, legal status, community sanctions, and motor vehicle theft among others.

The total sentence points scored is entered into a mathematical computation that determines the lowest permissible sentence. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a nonstate prison sanction (usually community supervision), though the sentencing range is the minimum sanction up to the maximum penalty provided in s. 775.082, F.S. If the total sentence points exceeds 44 points, a prison sentence is the lowest permissible sentence, though the judge may sentence up to the maximum penalty provided in

³ s. 921.002, F.S.

⁴ The level ranking is assigned either by specifically listing the offense in the appropriate level in the offense severity ranking chart of the Code, s. 921.0022, F.S., or, if unlisted, being assigned a level ranking pursuant to s. 921.0023, F.S., based on the felony degree of the offense.

⁵ s. 921.0022, F.S.

⁶ s. 921.0024, F.S. All information regarding the Code is from this statute, unless otherwise indicated.

s. 775.082, F.S.⁷ Sentence length (in months) for the lowest permissible sentence is determined by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

A sentence may be “mitigated,” which means that the length of a state prison sentence may be reduced or a nonprison sanction may be imposed even if the offender scores a prison sentence, if the court finds any permissible mitigating factor. Section 921.0026, F.S., contains a list of mitigating factors. This is called a “downward departure” sentence.

A mitigating factor was added with the passage of the postadjudicatory drug court expansion in 2009:

921.0026 Mitigating circumstances.—

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

(m) The defendant’s offense is a nonviolent felony, the defendant’s Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For purposes of this paragraph, the term “nonviolent felony” has the same meaning as provided in s. 948.08(6).⁸

An offender cannot appeal a sentence within the permissible range (lowest permissible sentence to the maximum penalty), but can appeal an illegal sentence. The state attorney can appeal a downward departure sentence.

Postadjudicatory Drug Court Expansion in 2009

As previously noted, in 2009 the parameters under which an offender could be sentenced to complete a postadjudicatory drug court program were both statutorily defined and expanded beyond “traditional” local criteria. The target population consisted of felony defendants or offenders who have a substance abuse or addiction problem that is amenable to treatment. Entry into the postadjudicatory drug court program was also expanded to include offenders who violate their probation or community control solely due to a failed or suspect drug test.

Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for the expanded postadjudicatory drug court program may not score more than 52 sentencing points, must be before the court for sentencing on a nonviolent felony, and must show by a drug screening and the court’s assessment that he or she is amenable to substance abuse or addiction treatment. The defendant or offender must agree to enter the program.⁹ The recommendation of the state attorney and victim, if any, must be

⁷ If the sentence scored exceeds the maximum penalty in s. 775.082, F.S., the scored sentence is both the minimum sentence and the maximum penalty.

⁸ s. 921.0026(2)(m), F.S.

⁹ ss. 397.334, 921.0026(m), 948.01(7), 948.06(2)(i), 948.20, and F.S.

considered by the court.¹⁰ Successful completion of the program is a condition of a probation or community control sentence.¹¹

The drug court assumes jurisdiction of the case until such time as the offender successfully completes the program, is terminated from the program, or until the sentence is completed.¹²

Measuring Success of the 2009 Postadjudicatory Drug Court Expansion

It should be remembered that the statutory revisions which expanded the availability of postadjudicatory drug court to a larger pool of offenders have statewide application. However, the research and administrative focus has been on the areas of the state where the Legislature expected the expansion to have the most positive effect on prison costs and where extra funding was directed for the programs.

The Legislature appropriated \$19 million federal Byrne grant money, over a two-year period, to the Office of the State Courts Administrator (OSCA) to pay for additional postadjudicatory drug court coordinators, data collection and reporting, service providers, program administration, Department of Corrections costs and to compensate prosecutors and public defenders who handle these drug court cases within 8 counties.¹³

The number of participating counties was reduced from 9 to 8 following Duval county's withdrawal from the program in May, 2010. Currently the participants are:

- 1st Circuit; Escambia County
- 5th Circuit; Marion County
- 6th Circuit; Pinellas County
- 7th Circuit; Volusia County
- 9th Circuit; Orange County
- 10th Circuit; Polk County
- 13th Circuit; Hillsborough County
- 17th Circuit; Broward County

The 2009 legislation required the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to evaluate the effectiveness of postadjudicatory drug court programs and issue a report by October 1, 2010. Since the expansion programs became operational in early 2010, OPPAGA had a limited amount of data to review before its report was due.

OPPAGA found that expansion drug courts are generally meeting Florida drug court standards. Of the standards that were measurable at the time of the OPPAGA report, it was concluded that all of the programs are providing services along with the frequent judicial contact as expected for

¹⁰ s. 397.334(3), F.S.

¹¹ s. 948.01(7), F.S.

¹² s. 948.01(7), 948.06(2)(i), F.S.

¹³ 3 of the 8 state attorneys and 3 of the 8 participating public defenders accepted the grant money.

drug court programs, and early identification and placement of offenders in the program is the norm.¹⁴

Expansion drug courts, as currently implemented, are unlikely to significantly reduce state prison costs. According to the October 2010 OPPAGA report, without changes, the anticipated cost savings to the state are not likely to be met for three main reasons:

- 1) *Because of the interplay of several factors, the initial estimate of potential prison inmates who might be diverted from prison to postadjudicatory drug court was overly ambitious, which has translated to overstated estimated savings to date.*

Estimated savings were calculated using data that included the historical drug crime-related prison admissions, by jurisdiction, in order to determine which counties and circuits should yield the largest pool of potential candidates for postadjudicatory drug court. Based upon this data, the jurisdictions were chosen for the focus of the drug court expansion and receipt of the federal grant money. Losing Duval County as a participant adversely effected the program's savings outcome to date because the anticipated number of offenders from that county (200) were included in the potential defendants or offenders diverted. Also, Duval County has not been replaced with another county participant.¹⁵

Additionally, the program was slower to become operational than originally anticipated. This resulted in fewer cases being processed and a smaller number of offenders being sentenced to the expanded program, to date, than originally planned.¹⁶

There has been some reported resistance to implementing the program under the expanded participant parameters set forth in the 2009 statutes. Specifically, offenders who may meet the statutory criteria for admission to the program are apparently not always being considered for it.¹⁷ According to the OPPAGA report, the state attorney's office in each of the 8 counties screen the cases to determine whether the defendant meets the court's eligibility criteria.¹⁸ It is possible that some offenders are rejected during the screening process or that the courts have standards for candidates that are more restrictive than anticipated.¹⁹

There is also anecdotal evidence that some eligible defendants and offenders may be choosing not to participate in the prison-diversion program. These variables were not taken into consideration, or perhaps were not quantifiable, when cost savings were estimated by the Office of Economic and Demographic Research, Office of the State Courts Administrator and other participants in the planning and implementation process.²⁰

¹⁴ "Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings," Office of Program Policy Analysis and Governmental Accountability Report No. 10-54, October 2010, pgs. 2-3.

¹⁵ Briefing document for Legislative Budget Commission presentation by State Court System, July 2009; Adult Post-Adjudicatory Drug Court Expansion Program, Status Update (draft on file with Florida Senate Criminal Justice Committee) dated February 14, 2011, OSCA.

¹⁶ Adult Post-Adjudicatory Drug Court Expansion Program, Status Update (draft on file with Florida Senate Criminal Justice Committee) dated February 14, 2011, OSCA.

¹⁷ *Id.* at pgs. 4-5.

¹⁸ *Id.* at pg. 2.

¹⁹ *Id.* at pg. 4. OPPAGA indicates that the postadjudicatory eligibility criteria set forth, for the first time, in the Florida Statutes in 2009 varied from the "traditional" criteria that had been implemented at the local level.

²⁰ Briefing document for Legislative Budget Commission presentation by State Court System, July 2009.

2) *Current eligibility criteria restrict admissions.*

Although OSCA reports 811 admissions statewide through January 2011, this is well below the expected number of admissions and below the program capacity.²¹ OPPAGA indicates that restricting the admissions in violation of probation or community control cases to only those where the *sole violation* is a failed substance abuse test has omitted a large pool of offenders. This is so because 74 percent of all violations for a failed drug test occur with *other technical violations*.²² Reaching this pool of offenders would require a change in statutory eligibility criteria.

Also, although the 2009 criteria does not exclude offenders with a felony history of violent offenses, they have “traditionally” been excluded from drug courts due to federal grant restrictions. The Byrne grant funds that have been appropriated to expand postadjudicatory drug court do not carry those restrictions, however, the courts and perhaps other practitioners have been reluctant to include this pool of offenders in the postadjudicatory drug court program.²³

3) *The postadjudicatory drug courts are serving offenders who were not intended by the Legislature to be a part of the program.*

Under the Florida Criminal Punishment Code, an offender or defendant who scores less than 44 total sentencing points is unlikely to be sentenced to a term in prison absent special circumstances.²⁴ When the points are equal to or exceed 44, the lowest permissible sentence is a term of incarceration, absent mitigating factors or other appropriate sentencing alternatives.

The 2009 postadjudicatory drug court expansion provided statutory authority to admit offenders with sentencing points of 52 or less into the program as a condition of community supervision, in lieu of a prison sentence. The goal was to *divert* qualified offenders *who, without the alternative sentencing, might otherwise have gone to prison* to a program that both showed a quantifiable success rate and that costs far less than incarceration.²⁵ It appears, however, that -- by a 2-to-1 margin -- the offenders who are receiving postadjudicatory drug court sentences score from 1 to 43 points.²⁶ Serving this particular pool of offenders is not achieving the anticipated cost savings the Legislature intended.

²¹ “Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings,” Office of Program Policy Analysis and Governmental Accountability Report No. 10-54, October 2010, pgs. 3-4; Status Update (draft on file with Florida Senate Criminal Justice Committee) dated February 14, 2011, OSCA.

²² Based upon Department of Corrections data as reported by OPPAGA, “Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings,” Office of Program Policy Analysis and Governmental Accountability Report No. 10-54, October 2010, pg. 4.

²³ *Id.* at pgs. 4-5.

²⁴ *Id.* at pg. 6.

²⁵ *Id.* at pgs. 5-6; OPPAGA Report 09-13, March 2009, *State’s Drug Courts Could Expand to Target Prison-bound Adult Offenders*.

²⁶ *Id.* at pg. 6. Of the 323 offenders in the program at the time of the report, 216 scored less than 44 points.

OPPAGA suggests the following changes in the postadjudicatory drug court program:

- Expand the admission criteria to include all technical violations of community supervision if there is a nexus to substance abuse and give courts discretion, statutorily, to include offenders with prior violent offenses.
- Include additional counties in the expansion program.
- Require the expansion drug courts to serve predominantly prison-bound offenders and consider shifting funding from counties that do not comply.

OPPAGA also suggests that the federal grant dollars could be shifted to other prison-diversion programs rather than have the funds revert to the federal government.²⁷

III. Effect of Proposed Changes:

This bill provides for additional sentencing options for a statutorily restricted population of defendants and community supervision offenders who might successfully, and safely, be diverted from the prison system into existing postadjudicatory drug court programs. The target population consists of offenders who have a substance abuse or addiction problem that is amenable to treatment and who are currently in the criminal justice system because of a nonviolent felony offense.

Entry into the postadjudicatory drug court program is also expanded to include offenders who violate their probation or community control for any reason.

Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for a postadjudicatory drug court program may not score more than 60 sentencing points, shall be before the court for sentencing on a nonviolent felony, and must show by a drug screening and the court's assessment that he or she is amenable to substance abuse or addiction treatment. The defendant or offender must agree to enter the program. He or she may have prior violent felony offenses and be admitted to the program at the court's discretion. The state attorney and victim, if any, must be consulted. Successful completion of the program is a condition of a probation or community control sentence.

The bill becomes effective July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁷ *Id.* at pgs. 6-7.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although the Criminal Justice Impact Conference has not yet met to consider the potential fiscal impact of this bill, staff of the Legislature's Economic and Demographic Research Division provided a preliminary estimate that if 10 percent of the eligible pool of offenders are diverted from prison, \$.9 million (operating costs) could be saved in the first year. Year five could see a \$26.1 million reduction in Department of Corrections operating costs if the same rate of admissions is maintained.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.