

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB CCJP 09-02 Drug Courts  
**SPONSOR(S):** Criminal & Civil Justice Policy Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	<u>Criminal &amp; Civil Justice Policy Council</u>	_____	<u>Krol</u>	<u>Havlicak</u>
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
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5)	_____	_____	_____	_____

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**SUMMARY ANALYSIS**

The proposed committee bill (bill) sets criteria to allow certain nonviolent offenders to participate in pretrial diversion and post-adjudicatory drug court programs.

The bill provides mitigating factors for a departure from sentencing that will allow certain nonviolent offenders to be sentenced to a post-adjudicatory treatment-based drug court program.

The bill also provides individuals who violate their probation or community control based solely on a failed or suspect substance abuse test can be ordered to complete a post-adjudicatory treatment-based drug court program. Violations based on a failed or suspect substance abuse test will be heard by the judge presiding over the post-adjudicatory drug court program.

The bill allows certain chronic substance abusers and nonviolent offenders to be sentenced to drug offender probation or a post adjudicatory treatment-based drug court program.

The bill requires circuit courts to annually report client-level and programmatic data from pre-trial and post-adjudicatory treatment-based drug courts to the Office of State Courts Administrator.

The bill directs the Office of Program Policy Analysis and Government Accountability to evaluate and report the effectiveness of pre-trial and post-adjudicatory treatment-based drug court programs.

While the bill is largely discretionary in nature, staff of the Legislature's Economic and Demographic Research Division estimate that the bill could result in diverting as many as 160 inmates from prison in Fiscal Year 2009-10 for an estimated savings of \$11.8 million.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Drug Court Background**

The drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding. The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were "revolving back through the criminal justice system because of underlying problems of drug addiction." The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together. There are two types of drug court programs: pre-trial diversion and post-adjudicatory.<sup>1</sup>

Pre-trial diversion drug courts are designed for first-time offenders who, in lieu of the program, would likely be placed on county probation rather than in state prison. Participants are diverted into the program prior to adjudication. Upon successful completion of the program, the offender's charges may be dropped. As of September 2008, pre-trial diversion drug courts operated in 31 counties in 18 judicial circuits. Pre-trial diversion drug court programs admitted approximately 6,573 offenders during calendar year 2007.<sup>2</sup>

Post-adjudicatory drug courts serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced. As of September 2008, post-adjudicatory drug courts operated in 26 counties in 11 judicial circuits. Post-adjudicatory drug court programs admitted 1,694 offenders during calendar year 2007.<sup>3</sup>

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<sup>1</sup> *The Florida Drug Court System*, Publication by the Florida Supreme Court, revised January 2004, p.1.

<sup>2</sup> *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, Office of Program Policy Analysis & Government Accountability, Report No. 09-13.

<sup>3</sup> *Id.*

Although every judicial circuit has some form of drug court, only 9 of the 20 circuits have both types of drug court programs. Many counties have access to only one type of program, and 23 counties do not have access to either type of drug court programming.<sup>4</sup>

Each drug court operates independently and is funded through a mixture of county funds, federal grants, client fees, and state funds provided through the Office of the State Courts Administrator, the Department of Corrections, and the Department of Children and Families. In Fiscal Year 2007-08, drugs courts received approximately \$25 million in funding of which \$15 million was local county funding. Recent budget cuts to state agencies have reduced the availability of treatment services to drug courts. In February 2009, the Office of the State Courts Administrator requested information on how local drug courts have been affected by recent budget reductions. Of the 14 circuits responding, 13 reported reductions in treatment services, resulting in fewer defendants served, or increased waiting lists and waiting time for treatment services, particularly residential treatment. In addition, 16 out of 37 case management positions funded through the Office of the State Courts Administrator were eliminated. Some circuits also reported reductions in drug screening and an increase in relapse and positive drug tests as a result.<sup>5</sup>

Drug courts generally use graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions can include mandatory community service, extended probation, or jail stays.<sup>6</sup>

Florida statutes specify criteria for voluntary admission into pretrial drug courts, but do not address eligibility criteria for post-adjudicatory drug court. Section 948.08(6)(a), F.S., states that a person who is charged with a second or third degree felony for purchase or possession of a controlled substance under chapter 893, F.S., prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud is eligible for pretrial diversion if he or she:

- has not been charged with a crime involving violence, including but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence;
- has not previously been convicted of a felony nor been admitted to a felony pretrial program referred to in this section; and
- has not rejected on the record previously offered admission into the program.

However, if the state attorney can prove that the defendant was involved in the dealing or selling of controlled substances, the court can deny the defendant's admission into a pretrial intervention program.

### **The Criminal Punishment Code**

The Criminal Punishment Code (Code) applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.<sup>7</sup> Each non-capital felony offense is assigned a level ranking that

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 921.002, F.S.

reflect its seriousness.<sup>8</sup> There are ten levels, and Level 10 is the most serious level.<sup>9</sup> The primary offense, additional offenses and prior offenses are assigned level rankings.<sup>10</sup> Points accrue based on the offense level. As the offense level increases, the number of points rises. 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 other factors such as victim injury, legal status, community sanctions, motor vehicle theft, etc.

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 non-state prison sanction, though the sentencing range is the minimum sanction up to the maximum penalty provided in s. 775.082, F.S., which is based on the degree of the felony. 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 s. 775.082, F.S.<sup>11</sup> 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 non-prison sanction may be imposed even if the offender scored 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. Currently substance abuse or addiction is excluded from the list of justifications for a “downward departure.”<sup>12</sup>

An offender cannot appeal a sentence within the permissible range (lowest permissible sentence to the maximum penalty), but can appeal an illegal sentence.<sup>13</sup> The state attorney can appeal a downward departure sentence.<sup>14</sup>

### **Effect of the Bill**

The proposed committee bill (bill) amends ss. 397.334 and 948.01, F.S., to allow a defendant to enter a post-adjudicatory treatment-based drug court program (post-adjudicatory program) as a condition of probation or community control.<sup>15</sup> The bill also amends s. 948.06, F.S., to provide that a defendant may be admitted to a post-adjudicatory program if the defendant violated their probation or community control due to a failed or suspect substance abuse test and are otherwise qualified to participate in the program.

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<sup>8</sup> 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.

<sup>9</sup> Section 921.0022, F.S.

<sup>10</sup> Section 921.0024, F.S. All information regarding the Code is from this statute unless otherwise stated.

<sup>11</sup> 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.

<sup>12</sup> Section 921.0026(3), F.S.

<sup>13</sup> Sections 924.06(1)(d)-(e), F.S.

<sup>14</sup> Section 924.07(1)(j), F.S.

<sup>15</sup> Pursuant to s. 948.01, F.S.

Admission into the post-adjudicatory program is based on the sentencing court's assessment of the defendant's:

- criminal history and underlying offense, which the bill provides must be a "nonviolent felony;"
- substance abuse screening outcome;
- amenability to the services of the program;
- total sentence points, which the bill provides must be 60 or fewer;<sup>16</sup> and
- agreement to enter the program.

The bill defines "nonviolent felony" as a third degree felony violation of chapter 810, F.S.,<sup>17</sup> or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.<sup>18</sup>

The bill amends s. 397.334, F.S., to require drug court participants' violations of probation or community control based only on a failed or suspected substance abuse test will be heard by the judge presiding over the post-adjudicatory program. The judge may dispose of any such violation as he or she deems appropriate as long as the resulting sentence or conditions are lawful.

Sections 948.01 and 948.06, F.S., are amended to allow the sentencing judge to relinquish jurisdiction over a defendant's case to the post-adjudicatory program drug court judge until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant's termination from the program, or the defendant's sentence is completed.

The bill amends s. 948.08, F.S., to allow participation in a pretrial diversion drug court program by defendants who have committed a "nonviolent felony" and are assessed with a substance-abuse problem. The section will also allow defendants to participate in the pretrial program regardless of whether they have previously been admitted to a felony pretrial program.

The Criminal Punishment Code is amended in s. 921.0026(2)(m), F.S., to add a new mitigating factor for sentencing. The bill will allow defendants to participate in a post-adjudicatory program if the defendant committed a nonviolent felony, is amenable to the services and is otherwise qualified.

The bill amends the drug offender probation statute, s. 948.20, F.S., to allow the court to place a defendant who committed a violation of sections 893.13(2)(a)<sup>19</sup> or 893.13(6)(a),<sup>20</sup> F.S., or a nonviolent felony to be placed in a post-adjudicatory drug court program.

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<sup>16</sup> A defendant scoring 60 points would be required to serve at least 24 months in prison.

<sup>17</sup> Currently burglary of an unoccupied structure or conveyance as defined in s. 810.02(4), F.S., is the only forcible felony included in the definition of "nonviolent felony."

<sup>18</sup> "Forcible felony" is defined as "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual."

<sup>19</sup> This provision relates to purchase of a controlled substance. This section provides for a range of penalties that include a second or third degree felony or a first degree misdemeanor depending on the controlled substance.

<sup>20</sup> This provision relates to possession of a controlled substance without a valid prescription.

The bill amends s. 397.334, F.S., to require circuit courts to annually report client-level and programmatic data from pretrial and post-adjudicatory treatment-based drug courts to the Office of State Courts Administrator. Client-level data includes:

- primary offenses that resulted in drug court referral or sentence;
- treatment compliance;
- completion status and reasons for failure to complete;
- offenses committed during treatment and sanctions imposed;
- frequency of court appearances; and
- units of service.

Programmatic data includes:

- referral and screening procedures,
- eligibility criteria,
- type and duration of treatment offered, and
- residential treatment resources.

Finally, the bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate and report the effectiveness of pre-trial and post-adjudicatory treatment-based drug court programs. OPPAGA must report its finding to the Legislature by October 1, 2010.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 397.334, F.S., relating to treatment-based drug court programs.

Section 2. Amends s. 921.0026, F.S., relating to mitigating circumstances.

Section 3. Amends s. 948.01, F.S., relating to when court may place defendant on probation or into community control.

Section 4. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 5. Amends s. 948.20, F.S., relating to drug offender probation.

Section 6. Provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

See "Fiscal Comments."

##### 2. Expenditures:

See "Fiscal Comments."

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

See "Fiscal Comments."

##### 2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

While the bill is largely discretionary in nature, staff of the Legislature's Economic and Demographic Research Division estimate that the bill could result in diverting as many as 160 inmates from prison in Fiscal Year 2009-10 for an estimated savings of \$11.8 million. This estimation assumes that 10 percent of offenders who are charged with only cocaine possession as a primary offense and have less than 60 points enter the post-adjudicatory treatment-based drug court program at initial sentencing or after a supervision violation.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES