

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1801 w/CS Violation of Probation or Community Control  
**SPONSOR(S):** Committee on Judiciary and Rep. Kottkamp  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	16 Y, 0 N	Jaroslav	Havlicak
2) Public Safety & Crime Prevention	18 Y, 0 N w/CS	Maynard	De La Paz
3) Public Safety Appropriations (Sub)			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

HB 1801 w/C/S adds specific criteria to be used during “danger to the community hearings” for a judge to determine whether or not a probation violator poses a risk of physical harm to persons. For those offenders found to be a danger to the community, the offender may not be returned to probation, but must be sentenced to prison for a length of time within the range provided by the Florida Punishment Code. The length of the prison sentence is for the judge to decide. The committee substitute provides that persons on probation for “high risk felonies” (defined as: forcible felonies, lewd or lascivious batteries, or acts of terrorism) who violate probation may not be released on bond. Repeat violent offenders will be disqualified from probation, as well as, from community control, unless the state attorney agrees to such a placement. HB 1801 w/CS also allows local law enforcement to assist probation officers in making warrantless arrests of probation and community control violators. The bill also strengthens standard terms of probation relating to monthly reporting, drug testing requirements and unauthorized contact with crime victims.

At the discretion of the Judge, the committee substitute also permits the imposition of an appearance bond at sentencing for defendants placed on probation or community control as a condition of supervision. The bail agent is required to produce the defendant at any court proceeding within 72 hours of notice. The bail agent would be required to take a probationer into custody upon the request of a probation officer. The relationship between bail agent and probationer is the same as current law. This bill creates a new subsection (8) within s. 948.06, F.S., the section governing the process of determining violation of probation or community control.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1801c.ps.doc  
**DATE:** April 14, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Chapter 948 of the Florida Statutes governs probation and community control. Section 948.001(2), F.S., defines “community control” as:

a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

Currently, a correctional probation officer is statutorily restricted from having more than 25 community controllees on his or her caseload.<sup>1</sup>

Section 948.001(5), F.S., defines “probation” as:

a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03.

The number of probationers, above which a correctional probation officer is statutorily prohibited from supervising, varies with the type for probation. For drug offender probation, the caseload may not exceed 50 probationers.<sup>2</sup> For sex offender probation, the caseload may not exceed 40 probationers.<sup>3</sup> There is no statutorily imposed caseload limit for regular probation.

Florida courts are currently authorized by statute to sentence any defendant to probation or community control except for one charged with a crime punishable by death, pursuant to conviction by a jury, conviction by the judge in a bench trial, or a plea of either guilty or *nolo contendere*.<sup>4</sup> Such a sentence may be imposed with or without formal adjudication of guilt.<sup>5</sup> A court may also split a defendant’s sentence between incarceration and probation or community control.<sup>6</sup> However, under s. 921.187(2), F.S., a defendant is disqualified from community control if the current conviction is for a forcible felony,

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<sup>1</sup> See s. 948.10(2), F.S.

<sup>2</sup> See s. 948.001(4), F.S.

<sup>3</sup> See s. 948.12, F.S.

<sup>4</sup> See s. 948.01(1), F.S.

<sup>5</sup> See *id.*

<sup>6</sup> See ss. 948.01(6) and 948.01(11), F.S.

and the offender's past criminal history contains a previous conviction of a forcible felony. Forcible felony is defined in 776.08, F.S. as:

treason; murder; manslaughter; sexual battery; carjacking; home-invasion 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.

Notwithstanding this definition, for the purpose of determining whether a defendant may be placed in community control, manslaughter and robbery do not count as "forcible felonies."<sup>7</sup>

Section 948.03, F.S., provides an extensive list of terms of probation or community control any or all of which a court may impose, as well as a number of mandatory terms that the court must impose as standard conditions for those placed on probation or community control for certain sex crimes. Under s. 948.06, F.S., whenever there are reasonable grounds to believe that a probationer or offender in community control ("offender") has violated the terms imposed by the court in a material respect, they may be arrested without warrant by any law enforcement officer aware of their status as a probationer or offender, and returned to the court that imposed that sentence; moreover, upon affidavit from law enforcement stating reasonable cause to believe terms are being violated, the court may issue a bench warrant for the probationer or offender's arrest.<sup>8</sup>

Once brought before the court for an alleged violation of probation or community control, the probationer or offender is advised of the charge of violation against them.<sup>9</sup> If the charge is admitted to, the court may immediately revoke, modify or continue the probation or community control.<sup>10</sup> If the charge is not admitted to, the court may commit the probationer or offender to custody or release him or her with or without bail pending final determination of a violation hearing.<sup>11</sup> If the court determines there has been a violation, it may then revoke, modify or continue the probation or community control.<sup>12</sup>

There is no express statutory provision requiring the state attorney to "prosecute" violations of probation. Florida courts have viewed prosecution as ending when the court sentences an offender. Violations of probation or community control are proceedings on the violations of a court order. However, courts have held that a prosecutor may not refuse to represent the state at a violation of probation hearing in the state attorney's jurisdiction, principally because there is no other party better equipped to fill this role. Carwise v. State, 449 So.2d 943 (Fla 5<sup>th</sup> DCA 1984).

## Proposed Changes

HB 1801 w/C/S adds specific criteria to be used during "danger to the community hearings" for a judge to determine whether or not a probation violator poses a risk of physical harm to persons. For those offenders found to be a danger to the community, the offender may not be returned to probation, but must be sentenced to prison for a length of time within the range provided by the Florida Punishment Code. The length of the prison sentence is within the court's discretion. HB 1801 w/CS provides that persons on probation for "high risk felonies" (defined as: forcible felonies, lewd or lascivious batteries, or acts of terrorism) who violate probation may not be released on bond. Repeat violent offenders will be disqualified from probation, as well as, from community control, unless the state attorney agrees to such a placement. HB 1801 w/CS also allows local law enforcement to assist probation officers in making warrantless arrests of probation and community control violators.

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<sup>7</sup> See s. 948.01(8), F.S.

<sup>8</sup> See s. 948.06(1), F.S.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

Standard terms of probation do not require oral pronouncement at sentencing. The bill amends statutory standard terms of probation to include the following: a monthly report by the probationer to the probation officer, monthly drug testing for probationers whose underlying offense involved a controlled substance, and a prohibition on unauthorized contact with victims of crimes.

At the discretion of the Judge, the bill with CS also permits the imposition of an appearance bond at sentencing for defendants placed on probation as a condition of probation or community control. The bail agent is required to produce the defendant at any court proceeding within 72 hours of notice. The bail agent would be required to take a probationer into custody upon the request of a probation officer. The relationship between bail agent and probationer is the same as current law.

The bill also specifies that state attorneys shall represent the State at violation of probation and community control proceedings.

C. SECTION DIRECTORY:

**Section 1.** amends s. 901.15, F.S., providing for an arrest by a person without a warrant by law enforcement for a violation of probation.

**Section 2.** amends s. 921.187, F.S., prohibiting the placement on probation or community control a person convicted of a “disqualifying forcible felony.”

**Section 3.** creates s. 903.0947, F.S., providing for a bond as a condition of probation

**Section 4.** amends s. 948.01, F.S., giving law enforcement power to make warrantless arrests for violations of probation.

**Section 5.** amends s. 948.01 prohibiting a person from being placed on probation or community control if previously convicted of a disqualifying forcible felony.

**Section 6.** amends s. 948.03, F.S. amending the standard terms of probation.

**Section 7.** amends s. 948.032, F.S. providing that it shall be the responsibility of the probationer to demonstrate the inability to pay restitution.

**Section 8.** amends. 948.06, F.S. providing for warrantless arrests for violations of probation, providing that high risk felons may not be released on bail, and providing for “danger to the community hearings.”

**Section 9.** creating s. 948.10, F.S., providing for reports by the Department of Corrections.

**Section 10.** providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

By requiring more probation violators to be held in custody, either prior to their violation hearing or pursuant to their sentence, this bill could impose significant costs on the Department of Corrections. The fiscal impact is uncertain.

The hearings required by this bill could impose additional time and other costs on the courts, the state attorneys, and the public defenders. The fiscal impact, if any, is uncertain.

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

See above.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Although not expressly stated, this bill's requirement for hearings presumably authorizes the Supreme Court to promulgate procedural rules governing the conduct of those hearings.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 14, 2004, the Committee on Public Safety & Crime Prevention voted to approve the bill with a committee substitute incorporating two amendments. The amendment adds specific criteria to be used during "danger to the community hearings" for a judge to determine whether or not a probation violator poses a risk of physical harm to persons. For those offenders found to be a danger to the community, the offender may not be returned to probation, but must be sentenced to prison for a length of time within the range provided by the Florida Punishment Code. The length of the prison sentence is for the judge to decide. The committee substitute provides that persons on probation for "high risk

felonies” (defined as: forcible felonies, lewd or lascivious batteries, or acts of terrorism) who violate probation may not be released on bond. Repeat violent offenders will be disqualified from probation, as well as, from community control, unless the state attorney agrees to such a placement. The amendment also allows local law enforcement to assist probation officers in making warrantless arrests of probation and community control violators. The amendment also strengthens standard terms of probation relating to monthly reporting, drug testing requirements and unauthorized contact with crime victims.

At the discretion of the Judge, the committee substitute also permits the imposition of an appearance bond at sentencing for defendants placed on probation as a condition of probation or community control. The bail agent is required to produce the defendant at any court proceeding within 72 hours of notice. The bail agent would be required to take a probationer into custody upon the request of a probation officer. The relationship between bail agent and probationer is the same as current law.