

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2336

SPONSOR: Judiciary Committee and Criminal Justice Committee

SUBJECT: Probation and Community Control

DATE: April 8, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill reorganizes ch. 948, F.S., by subject area. The chapter relates to probation and community control. The bill includes no substantive changes.

Key areas of modification include:

- Placing the requirements for probation and for community control in separate sections;
- Creating separate sections for special conditions for drug offender probation and sex offender probation and community control;
- Consolidating issues relating to administrative probation in one section; and,
- Consolidating issues relating to electronic monitoring.

This bill substantially amends ch. 948 of the Florida Statutes.

II. Present Situation:

Chapter 948, F.S., contains the primary statutory provisions governing community supervision. It has been amended to some degree in all but one of the last 30 years. As a result, some sections contain multiple programs and ideas and the chapter is not well-organized.

The current system for probation and community control programs began in 1975 when responsibility for supervision of offenders in the community was removed from the authority of the Florida Parole Commission and placed under the control of the Department of Offender Rehabilitation. Prior to the "Correctional Organization Act of 1975," the Florida Parole Commission employed and directed all the probation and parole officers supervising offenders in the community and the prison system was a division of the Department of Health and

Rehabilitative Services. The Department of Offender Rehabilitation created by this act was later renamed the Department of Corrections. The Department of Corrections has grown to become one of the largest parts of Florida Government, and the Florida Parole Commission has been reduced to a quasi judicial function concerning a shrinking pool of offenders, in large part because of the abolition of parole for offenders sentenced after October 1, 1983.

As of September 30, 2003, there were 152,681 offenders on some form of community supervision in Florida. This number fluctuates as offenders are added to supervision, are released from prison onto supervision, have their supervision revoked and are sent to prison, or successfully complete their term of supervision.

The following table illustrates the types of supervision and the number of offenders for each type:

Probation (active and active-suspense)	126,792
Standard probation	105,972
Drug offender probation	16,621
Sex offender probation	2,694
Administrative probation	1,505
Community Control	12,328
Standard community control	11,998
Sex offender community control	330
Pretrial Intervention	8,005
Standard PTI	5,036
Drug offender PTI	2,969
Post-Prison Release	5,549
Parole	2,216
Other post-prison release	3,333
Other Supervision Types	7

Two-thirds of the parolees are from out of state and are supervised by the department pursuant to an interstate compact for parole and probation supervision.

All of the offenders listed above are under the supervision of the Department of Corrections. Those on probation, community control, and pretrial intervention are under the jurisdiction of the circuit court, and those on parole and some other form of post-prison release supervision are under the jurisdiction of the Parole Commission.

People who are found to have committed crimes can be placed on some form of community supervision, such as probation or community control, by any court having jurisdiction over criminal actions. The statute recommends community supervision for offenders who appear not likely to reoffend and present the lowest danger to the welfare of society. Generally, this means

those offenders whose sentencing guidelines score sheet does not recommend incarceration under the Criminal Punishment Code. There is also the possibility that a person can be diverted to a pretrial intervention program without having to go to trial or enter a plea, as will be discussed later.

Approximately one-fourth of the offenders on community supervision committed either a theft, forgery, or fraud as their most serious offense. Another one-fourth are on community supervision for committing a drug offense. Violent crimes, such as murder/manslaughter, sexual offenses, and robbery account for another one-fourth of the community supervision population. Of those placed on probation, 63 percent have no prior community supervision commitments and 87 percent have never been sentenced to prison. Of those placed into community control, 38 percent have no prior community supervision commitments and 81 percent have never been sentenced to prison. Of the nearly 153,000 persons on some form of community supervision, almost 95,000 a year will be removed from supervision and replaced by a slightly higher number of new admissions.

The department supervises all of the offenders who are sentenced to some form of community supervision out of circuit court. Counties manage probation and other types of supervision originating in county court, but this may be contracted out to private entities. Private entities may also handle some pretrial intervention programs.

TYPES OF SUPERVISION

Probation – Probation is a term or sentence imposed by the court with standard statutory conditions as well as special conditions that may be imposed by the court. Probation lasts for a specific period of time that cannot exceed the maximum sentence for the offense. The first two conditions that apply to probation and all forms of supervision require the probationer to report to his or her correctional probation officer and permit the officer to visit the probationer at work, home, or elsewhere. This requirement ensures that contact is maintained throughout the term of probation.

Administrative Probation – A probationer who successfully completes half the term of probation and who represents a low risk of harm to the community may be placed on Administrative Probation. This is a non-reporting status, but periodic record checks are completed to verify that the offender has not violated the law.

Drug Offender Probation – Drug offender probation includes intensive supervision that emphasizes treatment of the offender. Correctional probation officers with specific training or experience are assigned to supervise drug offender probationers. The caseloads for these officers are limited to 50 offenders. In addition to the standard terms and conditions of probation, drug offender probation includes an individual treatment plan and additional surveillance and random drug testing.

Sex Offender Probation and Sex Offender Community Control – Sex offender probation and sex offender community control also includes intensive supervision that emphasizes treatment. As with any form of community control, it may include electronic monitoring. Like drug offender probation, officers with specific training or experience and with limited case loads are

assigned to supervise sex offenders. Each offender in this program has an individualized plan of treatment. The standard terms and conditions of probation or community control apply to persons on sex offender probation, along with additional terms and conditions specified in the statutes. These conditions restrict the sex offender in terms of where he or she may live, work, and visit, with whom he or she may associate, and when he or she may be outside the residence. The statute also requires DNA samples, polygraph testing, and active participation in sex offender treatment.

Community Control – Community control is a community-based punishment alternative to incarceration or regular probation. It includes supervised house arrest, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is intended for felons who are unsuitable for regular probation because of their criminal background or the seriousness of their crime, but for whom the court deems imprisonment to be unnecessary. It may also be appropriate for some felony probation or parole violators who commit technical or misdemeanor violations. A correctional probation officer is statutorily restricted from having more than 25 community controllees on his or her caseload. Violation of any community control condition may result in revocation by the court and imposition of any sentence which might have been imposed originally.

As with other forms of supervision, all the standard terms and conditions of standard probation apply to persons on community control. In addition to those conditions, the statute permits the court to impose more contact with correctional probation officers, confinement to the residence except during work hours, mandatory public service, and electronic monitoring. Some sex offenders are placed on sex offender community control for heightened supervision, in which the additional sex offender conditions discussed in the section on sex offender probation would also apply.

Electronic monitoring is often used in community control cases to track the offender's movement or monitor compliance with terms of confinement to the residence. Section 948.03(3)(a)1, F.S., gives the department the discretion to place community controllees on electronic monitoring. However, the department does not exercise this discretion because of substantial case law that an offender's failure to submit to electronic monitoring ordered by the department cannot be a basis for revocation of community control.

Pretrial Intervention – Florida operates or oversees a number of different pretrial intervention programs, such as drug courts. The criminal justice system diverts some of the least serious offenders into these programs. These programs have conditions similar to probation, including fees, restitution, public service, and counseling to prevent a return to criminal behavior.

The chief judge of each circuit appoints an advisory committee that includes representatives of the prosecution, defense, and others to oversee the programs. Admission is limited to first time offenders who are charged with a third degree felony or less. Prior agreement of the state attorney and any victim is required, and the participant must waive speedy trial for the duration of the program. If the participant successfully completes the program, the state dismisses the charges and he or she avoids a criminal record. Noncompletion of the program results in normal prosecution of the case.

Other Forms of Supervision – The department supervises a limited number of post-prison offenders on parole, conditional release, and control release. The provisions and conditions for these programs are outlined in ch. 947, F.S., which deals with the Florida Parole Commission. This type of term of supervision is ordered by the commission rather than the sentencing court. Eligibility for parole was closed in 1983 when the sentencing guidelines were established. Other types of post-prison release supervision include provisional release, supervised community release, conditional pardons, county work release, and addiction recovery supervision.

The conditional release program applies to certain inmates convicted for committing very serious crimes who are released from incarceration prior to completion of their sentence due to application of gain time credits. These inmates must serve the remainder of their full sentence on community supervision.

III. **Effect of Proposed Changes:**

The bill reorganizes ch. 943, F.S., in a manner that breaks out the requirements for different forms of supervision into separate sections without making substantive revision to the law.

Key areas of modification include:

- Placing the requirements for probation and for community control in separate sections;
- Creating separate sections for special conditions for drug offender probation and sex offender probation and community control;
- Consolidated issues relating to administrative probation in one section; and,
- Consolidated issues relating to electronic monitoring.

Section 1 amends s. 948.001, F.S., to remove specific language about administrative probation. The language is reinstated in proposed new s. 948.013, F.S., Administrative Probation, contained in Section 12 of the bill.

Section 2 amends s. 948.01(3)(c), F.S., to reflect a numbering change resulting from the reorganization.

Section 3 transfers s. 948.01(5), F.S., concerning early termination of community control, to s. 948.10, F.S.

Section 4 transfers s. 948.01(6), F.S., concerning split sentences, to proposed new s. 948.012, F.S., Split Sentence of Probation or Community Control and Imprisonment.

Section 5 amends s. 948.01(7), F.S., to add language restricting the use of private entities to provide supervision services for offenders sentenced by the circuit court. This restriction is already in s. 948.01(1), F.S.

Section 6 transfers s. 948.01(9), F.S., concerning procedures governing violations of community control, to s. 948.10, F.S., Community Control Programs.

Section 7 transfers s. 948.01(10), F.S., concerning restrictions on who may be placed on community control, to s. 948.10, F.S., Community Control Programs.

Section 8 transfers s. 948.01(11), F.S., concerning split sentences, to proposed new s. 948.012, F.S., Split Sentence of Probation or Community Control and Imprisonment.

Section 9 transfers s. 948.01(12), F.S., concerning split sentences, to proposed new s. 948.012, F.S., Split Sentence of Probation or Community Control and Imprisonment.

Section 10 transfers s. 948.01(13), F.S., concerning chronic substance abusers, to proposed new s. 948.20, F.S., Drug Offender Probation.

Section 11 transfers s. 948.01(14), F.S., concerning criminal quarantine community control, to proposed new s. 948.101, F.S., Terms and Conditions of Community Control and Criminal Quarantine Community Control.

Section 12 transfers s. 948.01(15), F.S., concerning administrative probation, to proposed new s. 948.013, F.S., Administrative Probation. Language is repeated that authorizes the DOC to establish procedures for transferring an offender to administrative probation, and to collect an initial processing fee of up to \$50 for each probationer transferred to administrative probation.

Section 13 amends s. 948.011, F.S., by adding the words “an alternative” in order to make the sentence grammatically and logically correct.

Section 14 amends s. 948.03(1), F.S., as follows:

- Paragraph (n), a special condition of probation requiring attendance at an HIV/AIDS awareness program, is deleted but reinstated in proposed new s. 948.039, F.S., Special Terms and Conditions of Probation or Community Control Imposed by Court Order, in Section 26 of the bill.
- Paragraph (o), a special condition of probation requiring payment of no more than \$1 per month to a nonprofit organization established for the purpose of supplementing the department’s rehabilitative efforts, is deleted but reinstated in proposed new s. 948.039, F.S., Special Terms and Conditions of Probation or Community Control Imposed by Court Order.
- A new paragraph (n) is added to include the requirement for submission of a blood or other biological sample as a standard condition of probation. This is current law. Section 24 of the bill would also place the language in a new s. 948.914, F.S., Requirement to Submit to Drawing of Blood or Other Biological Specimens. This bill requires the probationer or community control offender to reimburse the cost of drawing and transmitting blood or other biological specimens, and does not provide a fee schedule or cap such amounts.

Section 15 transfers s. 948.03(2), F.S., concerning terms and conditions of community control, to proposed new s. 948.101, F.S., Terms and Conditions of Community Control and Criminal

Quarantine Community Control. The new section includes introductory language providing that conditions in the section do not require oral pronouncement at the time of sentencing, which is current law in s. 948.03(2), F.S. Also, the new section includes language providing that the court can add other conditions of community control, but placing restrictions on imposition of certain conditions. This is current law in s. 948.03(6), F.S.

Section 16 transfers s. 948.03(3), F.S., concerning electronic monitoring, to s. 948.11, F.S., Electronic Monitoring Devices. It also deletes the current language in s. 948.11, F.S., which was created to require the department to purchase electronic monitoring devices in 1991. Those subject to electronic monitoring are required to pay a surcharge, in an amount not to exceed the full cost of the monitoring service in addition to the cost of supervision fee ordered by the court.

Section 17 transfers s. 948.03(4), F.S., to proposed new s. 948.31, F.S., Diagnosis and Evaluation of Offenders Placed on Probation or Community Control for Certain Sex Offenses or Child Exploitation.

Section 18 transfers s. 948.03(5), F.S., concerning terms of probation or community control for certain sex offenses, to proposed new s. 948.30, F.S., Additional Terms and Conditions of Probation or Community Control for Certain Sex Offenses, in Section 19 of the bill.

Section 19 amends s. 948.03(6), F.S., by deleting references to community control. In Section 15 of the bill, the language of subsection (6) is added to s. 948.101, F.S., Terms and Conditions of Community Control and Criminal Quarantine Community Control, with references to probation deleted.

Section 20 transfers s. 948.03(7), F.S., concerning residential treatment, to proposed new s. 948.035, F.S., Residential Treatment as a Condition of Probation or Community Control. References to Chapter 953 are deleted because Chapter 953 was repealed in 1996.

Section 21 transfers s. 948.03(8), F.S., to proposed new s. 948.036, F.S., Work Programs as a Condition of Probation, Community Control, or Other Court-Ordered Community Supervision.

Section 22 transfers s. 948.03(9), F.S., to proposed new s. 948.037, F.S., Education and Learning as a Condition of Probation or Community Control, and amends the subsection for grammatical purposes.

Section 23 transfers s. 948.03(10), F.S., requiring offenders to submit a biological sample, to proposed new s. 948.014, F.S., Requirement to Submit to Drawing of Blood or Other Biological Specimen. The subsection is reformatted for clarity and reference to “other biological samples” is added to conform with the language of s. 943.325, F.S.

Section 24 transfers s. 948.03(11), F.S., requiring offenders to pay for the costs of the biological sample, to proposed new s. 948.014, F.S., Requirement to Submit to Drawing of Blood or Other Biological Specimen.

Section 25 transfers s. 948.03(12), F.S., concerning domestic violence offenders, to proposed new s. 948.038, F.S., Batterers' Intervention Program as a Condition of Probation or Community Control.

Section 26 creates s. 948.039, F.S., Special Terms and Conditions of Probation or Community Control Imposed by Court Order. The new section includes an introductory paragraph for clarity and language that is currently in ss. 948.03(1)(n) and (o), F.S., and s. 948.03(6), F.S. This bill provides that terms and conditions of probation or community control should be reasonably related to the offense. The offender may be required to attend an HIV/AIDS awareness program, and pay up to \$1 a month during the term of probation or community control to a nonprofit organization established to supplement DOC rehabilitative efforts.

Section 27 amends s. 948.06, F.S., Violation of Probation or Community Control; Revocation; Modification, Continuance; Failure to Pay Restitution or Cost of Supervision. Subsection (1) is divided into 2 subsections, and further divided into paragraphs, to reflect the different stages of violation and revocation. Subsection (1) currently is a single paragraph of 79 lines in the published Florida Statutes without differentiation between topics.

Section 28 transfers s. 948.06(2), F.S., concerning actions required by a law enforcement agency when it arrests persons for certain sexual offenses, to proposed new s. 948.32, F.S., Requirements of Law Enforcement Agency Upon Arrest of Persons for Certain Sex Offenses.

Section 29 amends s. 948.09, F.S., Payment for Cost of Supervision and Rehabilitation, by adding the term "addiction-recovery supervision" to subsection (1) to be consistent with s. 944.4731, F.S. regarding payment for cost of supervision and rehabilitation. Additionally, subsection (7) is amended to correct a statutory reference.

Section 30 amends s. 948.10, F.S., Community Control Programs, by correcting a statutory reference in subsection (7).

Sections 31 through 38 corrects cross-references.

Sections 39 through 42 reenacts cross references to incorporate changes.

Section 43 provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
