

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: CS/SB 1794

INTRODUCER: Criminal Justice Committee and Criminal Justice Committee

SUBJECT: Probation

DATE: April 16, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill originated from recommendations made in Senate Interim Project Report 2007-110, “Convicted Felons on Probation and Prevention of Subsequent Crimes.”¹ It authorizes judges to issue notices to appear to offenders who are alleged to have violated probation or community control, rather than having them arrested and jailed. A notice to appear could be issued at the judge’s discretion, except that it is not authorized for offenders who have committed one of the Anti-Murder Act qualifying offenses. The bill provides for service of the notice by a probation officer, and tolls the probationary period when a notice to appear is issued or a warrantless arrest is made.

The bill requires the chief judge of each judicial circuit to direct the Department of Corrections (department) to use a notification letter to the court when reporting a violation of probation that does not involve a new criminal offense (a technical violation). The chief judge has discretion to determine the types of technical violation cases that are appropriate for use of a notification letter.

The bill also requires the department to provide the court with a recommendation for disposition of a case in which an offender admits to or is found to have violated probation or community control. The court may specify whether the report is to be oral or written, and may waive the requirement in any case or class of cases.

¹ COMM. ON CRIMINAL JUSTICE, FLA. SENATE, CONVICTED FELONS ON PROBATION & PREVENTION OF SUBSEQUENT CRIMES, (Interim Project Report 2007-110) (Jan. 2007), http://www.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-110cj.pdf.

If authorized by the court, the department may deliver affidavits, violation reports, notification letters of technical violation, and other documents by e-mail or facsimile.

The bill also addresses an Office of Program Policy Analysis and Government Accountability (OPPAGA) recommendation to remove statutory caseload restrictions applying to certain categories of offenders supervised by the department. The OPPAGA has found that the current statutory restrictions hinder appropriate supervision for high-risk offenders who are not in the statutorily restricted caseload categories. The bill directs the department to study the effect of removing the caseload restrictions and managing probation officer caseloads based upon an assessment of risk, and report the results to the Legislature and the Governor.

This bill substantially amends section 948.06, Florida Statutes.

II. Present Situation:

Approximately 111,000 offenders are actively supervised by the Department of Corrections (department) on some form of community supervision.² Florida law recommends community supervision for offenders who do not appear to be likely to reoffend and who present the lowest danger to the welfare of society.³ Generally, this includes those offenders whose sentencing score sheet result does not fall into the range recommending incarceration under the Criminal Punishment Code.⁴

The two major types of community supervision are probation and community control. Community control is a higher level of supervision that is administered by officers with a statutorily mandated caseload limit. Both probation and community control are judicially imposed sentences that include standard statutory conditions⁵ as well as any special conditions that are directed by the sentencing judge.⁶

Approximately one-fourth of the supervised offenders are under community supervision for committing murder, manslaughter, a sexual offense, robbery, or another violent crime. About one-third have burglary, theft, forgery, or fraud as their most serious offense. Drug offenders account for another one-fourth. The remaining supervised offenders are on community supervision for a weapons offense or other non-violent offenses.

The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) examined the state's felony community corrections program and issued a report in

² All data concerning community supervision are from the Department of Corrections Monthly Status Report of Florida's Community Supervision Population, February 2007. See FLA. DEP'T OF CORRECTIONS, TABLE 1, ACTIVE COMMUNITY SUPERVISION, OFFENDER POPULATION – FEBRUARY 2007, <http://www.dc.state.fl.us/pub/spop/0702/index.html>.

³ See, e.g., s. 948.01, F.S.

⁴ See ss. 921.002-921.0027, F.S.

⁵ Section 948.03(1), F.S.

⁶ Standard conditions are specified as such in statute and do not require oral pronouncement at sentencing. Special conditions include any other condition and are not enforceable unless orally pronounced by the court at the time of sentencing. See *Jones v. State*, 661 So. 2d 50, 51 (Fla. 2d DCA 1995). Some special conditions are included in the statutes as options for the sentencing court, and others are devised by the court.

April 2006.⁷ OPPAGA found that offenders classified as maximum risk commit a disproportionate number of offenses that are defined as serious under the Jessica Lunsford Act while they are under community supervision.⁸ The OPPAGA also reported that resources are not directed at offenders who pose the highest risk and that supervision is hindered by administrative tasks. As a consequence, OPPAGA recommended that statutory minimum caseload requirements should be removed and that the department should manage supervision based upon the offender's level of risk. Currently, there are three statutorily mandated caseload restrictions: s. 948.001(4), F.S., limits officers with a drug offender probation caseload to supervising 50 offenders; s. 948.10(3), F.S., limits officers with a community control caseload to supervision of no more than 25 offenders; and s. 948.12, F.S., limits officers to a maximum caseload of 40 offenders when they are supervising violent offenders after release from prison.

Violation of Probation or Community Control

Under s. 948.06, F.S., whenever there are reasonable grounds to believe that a probationer or community controllee has violated the terms imposed by the court in a material respect, the offender may be arrested without warrant by any law enforcement officer or parole and probation supervisor. A judge may also issue an arrest warrant based upon reasonable cause that the conditions of probation or community control have been violated. If an arrest warrant is used, the probation officer would first prepare an affidavit, warrant, and violation report.⁹ However, for certain specified violations, judges in approximately one-half of the counties in the state have agreed to the use of a technical violation letter to report those specified violations.¹⁰ Currently, documents reporting violations are not submitted via facsimile or other electronic means.¹¹ Finally, in some counties, the judges request the issuance of a notice to appear in lieu of signing warrants for certain violations.¹² In any case, after an arrest the offender is returned to the court that imposed the sentence.

Once brought before the court for an alleged violation, the offender is advised of the charge. If the charge is not admitted, the court may commit the offender to jail to await a hearing, release the offender with or without bail,¹³ or dismiss the charge. If the offender admits the charge or is judicially determined to have committed the violation, the court may revoke, modify, or continue community supervision. If supervision is revoked, the court must adjudge the offender guilty of the offense for which he or she was on community supervision, and can impose any sentence that could have been imposed at the original sentencing.

⁷ OFFICE OF PROGRAM POLICY ANALYSIS & GOV'T ACCOUNTABILITY, FLA. LEGISLATURE, SEVERAL DEFICIENCIES HINDER THE SUPERVISION OF OFFENDERS IN THE COMMUNITY CORRECTIONS PROGRAM, Report No. 06-37, (Apr. 2006), <http://www.oppaga.state.fl.us/monitor/reports/pdf/0637rpt.pdf>.

⁸ These offenses include murder, sexual offenses, robbery, carjacking, child abuse, and aggravated stalking. *Id* at 4-5.

⁹ FLA. DEP'T OF CORRECTIONS, 2007 BILL ANALYSIS: HB 7113 (Companion Bills: SB 1792 & SB 1794) (Mar. 9, 2007).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ The Anti-Murder Act, ch. 2007-2, Laws of Fla., prohibits pre-hearing release of violent felony offenders of special concern. Also, s. 948.06(4), F.S., a provision of the Jessica Lunsford Act, requires the court to make a finding that offenders who have committed certain sex offenses or are a registered sexual offender or sexual predator are not a danger to the public prior to release under any conditions.

A Senate interim project report noted concerns that have been raised about the department's "zero tolerance policy" toward probation violation allegations and discussed the effect of the policy in detail.¹⁴ The report pointed out that the murders of 11-year-old Carlie Brucia in February 2004 and of six young people in Deltona in August 2004 prompted the department to fully implement the policy. The following aspects of zero tolerance are relevant to this bill:

- It eliminated probation officer discretion in officially reporting an alleged technical violation to the court, especially if the violation was a minor one.
- It halted the practice of having probation officers recommend a disposition to the court when the judge finds that community supervision has been violated.

Aspects of this policy shift have caused concerns for the Judiciary. A particular concern to judges was the decision to withhold a probation officer's recommendation to the court when an offender is before the court for a probation violation. Judges testifying at a joint Senate-House committee expressed the opinion that the probation officer is the person most knowledgeable about the defendant. Absent the probation officer's presence in the courtroom and recommendation to the court, some judges questioned whether they would have enough documentation to make intelligent decisions about pending probation violation cases.

As of February 28, 2007, 36,083 violations were pending against offenders who are on active or active-suspense status (a total of 152,867 offenders). This figure represents a rate of 236 violations per 1,000 offenders.

III. Effect of Proposed Changes:

This bill amends s. 948.06(1)(b), F.S., to authorize a trial court to issue a notice to appear to an offender who is alleged to have violated probation or community control. However, a notice to appear may not be used in the case of an offender who has been convicted of committing one of the qualifying offenses listed in the Anti-Murder Act, or who is currently alleged to have committed one of those offenses.¹⁵ Probation officers would be authorized to serve notices to appear, but the bill does not provide any guidance as to whether they would have to do so as a special task or could do so in the course of a scheduled office or home visit with the offender.

Section 948.06(1)(d), F.S., currently provides for tolling of the probationary period "[u]pon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant under s. 901.02." This tolling is to prevent the expiration of a probationary period while the offender is pending resolution of violation charges. The bill provides for tolling after issuance of a notice to appear or a warrantless arrest.

The bill adds a new paragraph to s. 948.06(1), F.S., to require the chief judge of each judicial circuit to direct the Department of Corrections (department) to use a notification letter to inform judges of alleged technical violations¹⁶ of community supervision in appropriate cases. This

¹⁴ COMM. ON CRIMINAL JUSTICE, FLA. SENATE, REVIEW OF SANCTIONS ORDERED FOR VIOLATIONS OF PROBATION, (Interim Project Report 2006-109) (Jan. 2006), http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-109cj.pdf.

¹⁵ Ch. 2007-2, § 3, Laws of Fla.

¹⁶ Technical violations are those violations that do not include a new criminal offense.

direction must be in writing and must specify the types of violations that are to be included, any exceptions, and the process for submitting the letter. The letter is to be used in lieu of a violation report, affidavit, and warrant. As discussed in Section IV, Constitutional Issues, this requirement is effectively an authorization for chief judges to direct the department to use a notification letter. Although this new paragraph requires/authorizes the chief judge to direct the department to use a notification letter, the chief judge of a judicial circuit does not appear to have the authority to require individual judges to make use of notification letters.¹⁷ However, as noted in Section II, Present Situation, the department has indicated that judges in approximately one-half of the counties in the state already make some use of technical violation letters. Furthermore, as indicated by chief judge responses to a recent questionnaire,¹⁸ the decision whether or not to use technical violation letters seems to be made either collectively by the trial judges within a circuit or at the discretion of individual judges. The purpose of the notification letter is to allow the court to regulate its practice in dealing with violations that it considers to be less serious.

The bill also adds another new paragraph to s. 948.06(1), F.S., which allows the department to file violation reports, notification letters of technical violation, and other reports relevant to the probation violation process by e-mail or facsimile if authorized by the court.

Section 948.06(2), F.S., is amended to require the department to provide the court with a recommendation for disposition of any case in which an offender is found to have violated supervision, whether by admission or after a contested hearing. In a policy change related to the implementation of a “zero tolerance” policy adopted several years ago in the aftermath of some high profile cases, the department stopped the practice of having probation officers recommend to the court a disposition of the case.¹⁹ This provision is intended to allow the court to obtain input from a probation officer if it considers it to be useful in making a decision to send the offender to prison or to determine the appropriate type and conditions of supervision. The recommendation must include:

- Evaluation of the appropriateness or inappropriateness of community facilities, programs, or services for treating or supervising the offender;
- A statement of what the department considers to be an adequate level of community supervision and of the department’s ability to provide that level of supervision; and
- Consideration of the existence of treatments that could be useful to the offender but that are not available in the community.

The court may specify whether the report is to be oral or in writing, or may waive the requirement for a particular case or class of cases. The provision is not intended to prevent the department from making other reports as requested or authorized.

¹⁷ Article V, section 2(d) of the Florida Constitution provides that “[t]he chief judge [of a judicial circuit] shall be responsible for the administrative supervision of the circuit courts and county courts” in his or her circuit.

¹⁸ The Office of the State Courts Administrator recently surveyed the circuit court chief judges regarding the current use of notification letters.

¹⁹ See COMM. ON CRIMINAL JUSTICE, FLA. SENATE, *supra* note 14, at 2-3.

Section 2 of the bill requires the department to conduct a caseload and risk-assessment study concerning statutory restrictions on the caseload of correctional probation officers. The study would assess the benefits and risks of moving to caseload management based upon assessment of risk without the caseload restrictions that currently apply to drug offender probation, community control, and post-prison violent offender supervision. As previously noted, the Office of Program Policy Analysis and Government Accountability has recommended risk-based caseload management. The department must submit its report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2007.

The bill includes a provision making it effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 948.06(1)(e) of the bill provides that the chief judge of each circuit “shall” direct the department to use a notification letter of technical violation for notifying the court of certain violations in appropriate cases. On the surface, this provision raises questions of a possible infringement on the Judiciary’s constitutional authority;²⁰ however, it is effectively an authorization and not a mandate. This provision is effectively an authorization because it gives the chief judge the discretion to permit or to deny the use of notification letters by determining that certain types of cases are appropriate, or by inference, that no types of cases are appropriate. Thus it appears that there is no constitutional violation.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁰ Article II, section 3 of the Florida Constitution provides that “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided” for in the Constitution.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Anti-Murder Act²¹ includes provisions prohibiting release of certain violent probationers and community controllees prior to judicial disposition of any alleged violation of community supervision. This bill does not permit use of notices to appear for such offenders.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²¹ Ch. 2007-2, Laws of Fla.

VIII. Summary of Amendments:

None.

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