

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 387 Probationary or Supervision Services for Misdemeanor Offenders

**SPONSOR(S):** Maney and others

**TIED BILLS:** IDEN./SIM. BILLS: CS/CS/SB 752

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**FINAL HOUSE FLOOR ACTION:** 118 Y's 0 N's **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

HB 387 passed the House on March 9, 2022, as CS/CS/SB 752. The bill includes portions of CS/CS/HB 1037 and SB 1378.

Probation is a form of community supervision which requires a probationer to report to his or her probation officer as directed and to comply with other terms and conditions, such as maintaining employment whenever possible. If the circuit court places a defendant on probation for a felony, the Department of Corrections (DOC) must supervise the defendant. Further, s. 948.01, F.S., prohibits a private entity from providing probationary or supervision services to felony or misdemeanor offenders sentenced to probation or other supervision by the circuit court. As such, a private entity is authorized to provide supervision services to a misdemeanor offender sentenced by the county court, but cannot provide such services to a misdemeanor offender sentenced by the circuit court.

The bill amends ss. 948.01 and 948.15, F.S., to remove the prohibition on a private entity providing probationary or supervision services to misdemeanor offenders sentenced by the circuit court. The bill authorizes a private entity to provide probationary or supervision services to all misdemeanor offenders, regardless of whether the offender was sentenced by the county court or the circuit court. The bill authorizes DOC to supervise misdemeanor offenders when such supervision is ordered by the circuit court, and retains the current requirement for DOC to supervise felony probationers sentenced by the circuit court. The bill also transfers the authority to approve a contract with a private entity to provide supervision services for misdemeanor offenders from the county court judge or the administrative judge of the county court to the chief judge of the circuit.

Section 948.05(2), F.S., requires DOC to implement a system of graduated incentives to promote compliance with the terms of probation and prioritize the highest levels of supervision for probationers or offenders presenting the greatest risk of recidivism. As part of the graduated incentives system, a probation officer may offer incentives to a compliant probationer or offender in community control, such as reduced community service hours, recommending the court allow the probationer to travel, or a curfew modification. However, probationers or offenders in community control are not entitled to a reduction of supervision term under the graduated incentives system.

The bill authorizes a probationer to report remotely to his or her probation officer when approved by the probation authority and not excluded by the sentencing court. The bill requires a probation entity that authorizes remote reporting to adopt and publish remote probation reporting policies. The bill also amends s. 948.05, F.S., to require DOC to incentivize:

- Educational achievement by awarding a 60 day reduction in supervision term to a probationer or offender in community control who completes an educational advancement activity, which includes obtaining a high school diploma, high school equivalency degree, an academic degree, or a vocational certificate during his or her term of supervision; and
- Workforce achievement by awarding a 30 day reduction in supervision term to a probationer or offender in community control who maintains continuous and verifiable full-time employment, for at least 30 hours per week for a six-month period, from which he or she earns a wage.

The bill may have an indeterminate impact on DOC and the private sector. The actual number of misdemeanor probationers who will be diverted away from DOC supervision to a private supervision entity is unknown. Additionally, by requiring specified reductions to supervision terms, the bill may result in probationers or offenders being under DOC supervision for shorter terms.

Subject to the Governor's veto powers, the effective date of this bill is of July 1, 2022.

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

**STORAGE NAME:** h0387z.DOCX

**DATE:** 3/23/2022

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Probation and Community Control

In Florida, if a court places a defendant on probation or into community control for a felony, the Department of Corrections (DOC) must provide immediate supervision by a certified correctional probation officer.<sup>1</sup> Probation is a form of community supervision which requires a probationer to have specified contacts with his or her probation officer and to comply with other terms and conditions.<sup>2</sup> The sentencing court determines any special terms and conditions of probation, which must be reasonably related to the circumstances of the offense and may include requirements such as completing a substance abuse treatment program or community service hours<sup>3</sup> or having no contact with a specified victim. Additionally, a probationer is required to comply with several standard conditions of probation which may include:

- *Reporting to the probation officer as directed.*
- Permitting the probation officer to visit the probationer at his or her home.
- *Working faithfully at suitable employment, when possible.*
- Residing at a specified place.
- Living without violating the law.
- Paying restitution to any aggrieved party for the damage or loss cause by a probationer's offense.
- Being prohibited from possessing, carrying, or owning a firearm or weapon, without the probation officer's consent.
- Being prohibited from using intoxicants to excess or possessing any drugs or narcotics.<sup>4</sup>

Community control is a form of intensive individualized supervision of an offender who remains in the community, but whose freedom is restricted within the home, community, or noninstitutional residential placement and includes specific sanctions and monitoring by probation officers with restricted caseloads.<sup>5</sup> In addition to the standard conditions which apply to normal probationers, an offender on community control must: be confined to an agreed-upon residence during any hours he or she is away from work or public service activities; complete mandatory community services; and be supervised by electronic monitoring.<sup>6</sup>

##### *Misdemeanor Probation Supervision*

#### **Defendants Sentenced by the County Court**

County courts are trial courts that have original jurisdiction over all:

- Misdemeanor cases not cognizable by the circuit courts;
- Violations of municipal and county ordinances;

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<sup>1</sup> S. 948.01, F.S. A "correctional probation officer" is a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within a DOC institution or within the community. Additionally a correctional probation officer must meet the minimum qualifications for employment or appointment as established in s. 943.13, F.S. See s. 943.10, F.S.

<sup>2</sup> S. 948.001(8), F.S.

<sup>3</sup> S. 948.031, F.S.

<sup>4</sup> S. 948.03, F.S.

<sup>5</sup> S. 948.001(3), F.S.

<sup>6</sup> S. 948.101, F.S.

- Actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed \$30,000, exclusive of interest, costs, and attorney fees.<sup>7</sup>

A defendant who is placed on probation after being found guilty of a misdemeanor may not be sentenced to a term of supervision exceeding six months, unless otherwise ordered by the court.<sup>8</sup> Any person sentenced to misdemeanor probation by the county court must pay no less than \$40 per month, as determined by the court, to the court approved public or private entity providing misdemeanor supervision.<sup>9</sup>

Section 948.15, F.S., authorizes a licensed substance abuse education and intervention program to provide misdemeanor probation services to a defendant found guilty of a misdemeanor for possession of a controlled substance or drug paraphernalia. Additionally, a private entity or public entity, including such licensed substance abuse education and intervention programs, may provide probation services to offenders sentenced by a county court, when such services are provided under the supervision of the board of county commissioners or the court.<sup>10</sup> For example, the Salvation Army provides supervision services including drug testing, job assistance, community service placement, and substance abuse assistance and rehabilitation to misdemeanor probationers in multiple Florida counties.<sup>11</sup>

Any private entity providing supervision services for misdemeanor probationers must contract with the county in which the services will be provided.<sup>12</sup> In a county with a population of less than 70,000, the county court judge, or in a county with more than one county court judge, the administrative judge of the county court must approve the contract. The terms of the contract must include, but are not limited to:

- The extent of the services to be rendered by the entity providing supervision and rehabilitation.
- Staff qualifications and criminal record checks of staff.
- Staffing levels.
- The number of face-to-face contacts with probationers.
- Procedures for handling the collection of probationer fees and restitution.
- Procedures for handling indigent probationers that ensure placement irrespective of ability to pay.
- Circumstances under which revocation of a probationer's supervision may be recommended.
- Reporting and record keeping requirements.
- Default and contract termination procedures.
- Procedures that aid probationers with job assistance.
- Procedures for accessing criminal history records of probationers.<sup>13</sup>

The entity must report to the chief judge on a quarterly basis summarizing the number of probationers supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of probationers for whom supervision will be terminated. The entity must open its records to inspection upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any agent thereof.

A private entity that charges a fee for providing supervision services to probationers must register with the board of county commissioners in the county in which the entity offers services. The entity must provide specified information for each program it operates, including:

- The length of time the program has been operating in the county.

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<sup>7</sup> S. 34.01(1), F.S. Under this section, the jurisdiction of the county court in civil actions depends on the amount in controversy and the date upon which such action is filed.

<sup>8</sup> S. 948.15(1), F.S.

<sup>9</sup> S. 948.09(1)(b), F.S.

<sup>10</sup> S. 948.15(2), F.S.

<sup>11</sup> Such misdemeanor probation services are provided in Citrus, Dixie, Duval, Gilchrist, Highlands, and Marion counties. The Salvation Army, *Correctional Services*, <https://salvationarmyflorida.org/correctional-services/> (last visited Mar. 21, 2022).

<sup>12</sup> S. 948.15(3), F.S.

<sup>13</sup> *Id.*

- A list of the staff and a summary of their qualifications.
- A summary of the types of services that are offered under the program.
- The fees the entity charges for court-ordered services and any procedures for indigent probationers.<sup>14</sup>

A private entity, including a licensed substance abuse education and intervention program, providing misdemeanor supervision services must comply with all other applicable provisions of law.<sup>15</sup>

### **Defendants Sentenced by the Circuit Court**

A circuit court is a trial court that has exclusive original jurisdiction over:

- All actions at law not cognizable by the county courts;
- Proceedings relating to settling estates of decedents and minors, granting testamentary letters, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to probate courts;
- All cases in equity including all cases relating to juveniles except traffic offenses as provided in chapters 316 and 985;
- All felonies and all misdemeanors arising out of the same circumstances as a felony which is also charged;
- All cases involving the legality of any tax assessment or toll or denial of refund, except as provided in s. 72.011, F.S.;
- Ejectment actions; and
- All actions involving the title and boundaries of real property.<sup>16</sup>

Generally, felony offenses are adjudicated by the circuit court and misdemeanor offenses are adjudicated by the county court. However, circuit courts routinely adjudicate misdemeanor charges when:

- A misdemeanor charge arises out of the same circumstances as a felony; or
- A felony charge is reduced or dismissed in circuit court and the court retains jurisdiction over the remaining misdemeanor charge.

If the circuit court places a defendant on probation for a felony, DOC must supervise the defendant.<sup>17</sup> A defendant who is placed on probation for a misdemeanor may not be placed under DOC's supervision unless the circuit court was the court of original jurisdiction.<sup>18</sup> DOC currently supervises more than 164,000 offenders on probation or in community control throughout Florida.<sup>19</sup>

Any person placed on probation under ch. 948, F.S., must pay DOC supervision fees equal to the total month or portion of a month of supervision times the court-ordered amount, but such amount cannot exceed the actual per diem cost of supervision.<sup>20</sup> DOC must consider an offender's ability to pay in establishing a written pay plan. Any funds collected from felony probationers may be used by DOC to offset the costs associated with community supervision programs.<sup>21</sup>

Subsections 948.01(1) and (5), F.S., prohibit a private entity from providing probationary or supervision services to felony or misdemeanor offenders sentenced to probation or other supervision by the circuit court. As such, a private entity is authorized to provide supervision services to a misdemeanor offender

<sup>14</sup> S. 948.15(4), F.S.

<sup>15</sup> S. 948.15(5), F.S.

<sup>16</sup> S. 26.012(2), F.S.

<sup>17</sup> S. 948.01(1)(a), F.S.

<sup>18</sup> S. 948.01(2), F.S.

<sup>19</sup> Florida Department of Corrections, *Probation Services*, <http://www.dc.state.fl.us/cc/index.html> (last visited Mar. 21, 2022).

<sup>20</sup> S. 948.09(1)(a)1., F.S.

<sup>21</sup> *Id.* Additionally, a felony probationer must pay a \$2-per-month surcharge to be used by DOC to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and similar equipment. S. 948.09(1)(a)2., F.S.

sentenced by the county court but cannot provide such services to a misdemeanor offender sentenced by the circuit court.

### *Effect of the Bill – Misdemeanor Probation Supervision*

The bill amends ss. 948.01 and 948.15, F.S., to remove the prohibition on a private entity providing probationary or supervision services to misdemeanor offenders sentenced by the circuit court. As such, the bill authorizes a private entity to provide probationary or supervision services to all misdemeanor offenders, regardless of whether the offender was sentenced by the county court or the circuit court.

The bill gives any court the ability to order a misdemeanor offender to be supervised by a private entity, but does not require a court to order such supervision. The bill authorizes DOC to supervise misdemeanor offenders when such supervision is ordered by the circuit court. A felony probationer sentenced by the circuit court must continue to be supervised by DOC.

The bill revises the current contracting process to transfer the authority to approve a contract with a private entity to provide supervision services for misdemeanor offenders from the county court judge or the administrative judge of the county court to the chief judge of the circuit.

### *Remote Reporting and Probation Credits*

## **Education and Learning as a Condition of Probation or Community Control**

Section 948.037, F.S., authorizes a court to require an offender who has not obtained a high school diploma or a high school equivalency diploma or who lacks basic or functional literacy skills, to make a good faith effort toward attaining literacy skills or a high school equivalency diploma as a condition of probation or community control upon acceptance by an adult education program.<sup>22</sup> A court may not revoke probation or community control because of an offender's inability to achieve literacy skills or a diploma, but may revoke probation or community control if the offender fails to make a good faith effort towards achieving such skills or diploma.<sup>23</sup> A court may grant a probationer or offender in community control early termination of supervision upon his or her successful completion of an approved program.

## **Reduction or Termination of Term of Probation or Community Control**

Generally, once a probationer completes the period of probation, he or she is released from probation and the court no longer retains jurisdiction to sentence the offender for the offense for which probation was allowed. However, if a probationer has performed satisfactorily, has not been found in violation of any terms or conditions of supervision, and has met all financial conditions imposed by the court, including fines, court costs, and restitution, his or her probation officer may recommend early termination of probation to the court at any time before the scheduled termination date.<sup>24</sup>

Under s. 948.06(4), F.S., upon the probationer's motion,<sup>25</sup> the court shall order early termination of supervision or convert the supervisory term to administrative probation<sup>26</sup> if all of the following conditions are met:

- The probationer has completed at least half of the term of probation to which he or she was sentenced.
- The probationer has successfully completed all other conditions of probation.

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<sup>22</sup> S. 948.037, F.S.

<sup>23</sup> *Id.* "Good faith effort" means the offender is enrolled in a program of instruction and is attending and making satisfactory progress toward completion of the requirements.

<sup>24</sup> S. 948.04, F.S.

<sup>25</sup> This provision only applies to a defendant sentenced on or after October 1, 2019. See s. 948.04(4), F.S.

<sup>26</sup> "Administrative probation" is a form of no contact, nonreporting supervision. A court may order administrative probation, or DOC may transfer an offender to administrative probation under specified circumstances. S. 948.001(1), F.S.

- The court has not found the probationer in violation of probation pursuant to a filed violation of probation affidavit at any point during the current supervisory term.
- The parties did not specifically exclude the possibility of early termination or conversion to administrative probation as part of a negotiated sentence.
- The probationer does not qualify as a violent felony offender of special concern under s. 948.06(8)(b), F.S.<sup>27</sup>

However, a court may decline to early terminate the probationary term or convert the term to administrative probation if it makes written findings that continued reporting probation is necessary to protect the community or the interest of justice.<sup>28</sup> Additionally, an offender on community control is not eligible to motion for mandatory early termination or conversion to administrative probation under s. 948.04, F.S.<sup>29</sup>

### **Graduated Incentives**

Section 948.05(2), F.S., requires DOC to implement a system of graduated incentives to promote compliance with the terms of supervision and prioritize the highest levels of supervision for probationers or offenders presenting the greatest risk of recidivism. As part of the graduated incentives system, the department may offer, without leave of the court, the following incentives to a compliant probationer or offender in community control:

- Up to 25 percent reduction of required community service hours;
- Waiver of supervision fees;
- Reduction in frequency of reporting;
- Permission to report by mail or telephone; or
- Transfer of an eligible offender to administration probation as authorized under s. 948.013, F.S.<sup>30</sup>

The department may also incentivize positive behavior and compliance by recommending to the court to modify a probationer's terms of supervision, which may include recommending:

- Permission to travel;
- Reduction of supervision type;
- Modification or cessation of curfew;
- Reduction or cessation of substance abuse testing; or
- Early termination of supervision.<sup>31</sup>

A probationer or offender in community control may forfeit any previously earned probation incentive if he or she commits a subsequent violation of probation.<sup>32</sup> Graduated incentives are currently offered at the discretion of the probation officer or court and a probationer or offender in community control is not entitled to any such graduated incentive.

### **Gain Time Award for Inmates**

Section 944.275, F.S., authorizes DOC to grant deductions from prison sentences in the form of gain-time to encourage satisfactory behavior and to provide incentives for inmates to participate in productive activities. Specifically, s. 944.275(4), F.S., authorizes DOC to award an inmate:

- A one-time award of 60 days of incentive gain time for completing a high school equivalency diploma or vocational certificate.<sup>33</sup>

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<sup>27</sup> S. 948.04(4), F.S.

<sup>28</sup> S. 948.04(5), F.S.

<sup>29</sup> S. 948.04(6), F.S.

<sup>30</sup> S. 948.05(2)(a), F.S.

<sup>31</sup> S. 948.05(2)(b), F.S.

<sup>32</sup> S. 948.05(2)(c), F.S.

<sup>33</sup> S. 944.275(4)(d), F.S.

- Up to 10 days per month of incentive gain time for working diligently, participating in training, using time constructively, or otherwise engaging in positive activities.<sup>34</sup>

Probationers or offenders in community control are not entitled to a similar reduction of supervision term under the graduated incentives system.

#### *Effect of the Bill – Remote Reporting and Probation Credits*

The bill amends s. 948.05, F.S., to require DOC to implement the graduated incentives system for probationers and offenders in community control in a manner that encourages educational achievement and stable employment in addition to promoting compliance with terms of supervision and prioritizing the highest level of supervision for probationers and offenders presenting the greatest risk of recidivism. Under the bill, the department must incentivize:

- Educational achievement by awarding a 60-day reduction in the term of supervision for a probationer or offender in community control who completes an educational advancement activity during his or her term of supervision.
- Workforce achievement by awarding a 30-day reduction in the term of supervision for a probationer or offender in community control for each period of workforce achievement he or she completes during his or her term of supervision.

Under the bill, “educational advancement activity” means obtaining a high school diploma, a high school equivalency diploma, an academic degree, or a vocational certificate. The bill requires a probationer or offender in community control to be given a 60-day reduction in supervision for each educational advancement activity he or she completes and the award of such a reduction does not require court approval.

The bill defines “workforce achievement” as continuous and verifiable full-time employment, for at least 30 hours per week for a six-month period, from which the probationer or offender in community control earns a wage. Under the bill, a probation officer must verify employment through supporting documentation which may include any record, letter, pay stub, contract, or any other method approved by the probation officer. The bill requires a probationer or offender in community control to be given a 30-day reduction in supervision for each period of workforce achievement he or she completes and the award of such a reduction does not require court approval.

A probationer or offender in community control who commits a subsequent violation of probation may forfeit any supervision term reduction awarded for completing an educational advancement activity or period of workforce achievement, at the discretion of his or her probation officer.

The bill amends s. 948.03, F.S., to authorize a probationer or offender in community control to fulfill the standard reporting requirements of probation by remotely reporting to his or her probation officer if approved by the relevant probation officer, county probation authority or entity, or DOC, and if the court has not excluded remote reporting in his or her order of probation. If the probation entity or authority authorizes remote reporting, it must adopt and publish remote probation reporting policies.

Subject to the Governor’s veto powers, the effective date of this bill is July 1, 2022.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

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<sup>34</sup> S. 933.275(4)(b), F.S. Inmates sentenced for an offense committed on or after October 1, 1995 are eligible to earn up to 10 days of incentive gain time per month. However, an inmate may not be awarded any amount of gain time that would result in him or her serving less than 85 percent of the sentence imposed. See s. 944.275(4)(f), F.S.

None.

2. Expenditures:

The bill may have an indeterminate impact on DOC. The bill authorizes, but does not require, a private entity to provide probation services to misdemeanor offenders sentenced by the circuit court. As such, the actual number of probationers who will be diverted away from DOC supervision is unknown.

The bill requires the supervision term of a probationer or offender in community control to be reduced for completing educational advancement activities or periods of workforce achievement, which may result in probationers or offenders in community control being under department supervision for shorter terms.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate impact on the private sector. The bill authorizes, but does not require a private entity to provide probation services to misdemeanor offenders sentenced by the circuit court. Therefore, the bill may result in an increased number of probationers being supervised by a private entity, but the number of probationers that may actually be diverted is unknown.

Further, for probationers or offenders in community control who have their term of supervision reduced for completing educational advancement activities or periods of workforce achievement, the bill may reduce the amount of supervision and other related fees owed to DOC.

D. FISCAL COMMENTS:

None.