

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1263 Criminal Sentencing
SPONSOR(S): Criminal Justice Subcommittee, Amesty and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1478

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/HB 1263 passed the House on May 3, 2023, as CS/SB 1478 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on May 3, 2023.

Probation is a form of community supervision requiring an offender to maintain specified contacts with a probation officer and complete other terms and conditions. Several standard conditions of probation apply automatically, including requirements to report to a probation officer as directed and to live without violating any law. The court may also impose special conditions, such as community service hours, regular drug or alcohol testing, no contact orders, and treatment programs. Failure to meet any condition of supervision is a violation of probation. Generally, upon a finding that an offender violated probation, the court may revoke, modify, or continue supervision. If the court chooses to revoke supervision, it may impose any sentence that was permissible at the offender's initial sentencing.

In 2019, the Legislature passed legislation to address technical violations of probation more proportionally than had traditionally been authorized through court processes. A technical violation is any alleged violation of probation that is not a new felony, misdemeanor, or criminal traffic offense. Section 948.06(9)(h), F.S., requires each judicial circuit to establish an alternative sanctioning program (ASP), allowing the Department of Corrections to enforce technical violations with court approval, ensuring a swift and certain response without initiating the court process or arresting and booking the offender. Additionally, the law required a court to modify, rather than revoke, probation and imposed a 90-day jail cap for specified probationers committing a low-risk, technical violation.

The bill amends s. 948.06, F.S., to revise provisions related to probation and the ASP. Specifically, the bill:

- Requires a probation officer to resolve a probation violation under the ASP if a probationer or offender commits a first or second low-risk violation, unless the court directs the probation officer to file an affidavit of violation;
- Requires a court to impose the sanction recommended by a probation officer for a first or second low-risk violation under the ASP unless the court finds specific risks to public safety; and
- Requires a court to hold a hearing on a violation of probation within 30 days after a probationer's or offender's arrest or after counsel appears for the probationer or offender, whichever occurs later, or to release the probationer or offender without bail unless the court determines that the hearing was not held in the applicable time frame due to circumstances attributable to the probationer or offender.

The bill amends s. 921.0024, F.S., to prohibit a community sanction violation that was resolved through the ASP from being used to calculate total sentencing points when determining an offender's sentence for a violation of probation if probation is revoked.

The bill prohibits community sanction points from being assessed if a probationer or offender resolves a violation of probation through the ASP and requires a probationer or offender who commits a low-risk violation to be released within 30 days if a violation hearing does not occur. Thus, the bill may have a negative indeterminate jail and prison bed impact to the extent such probationers or offenders would otherwise be sentenced to a longer term of incarceration for committing a community sanction violation or would otherwise be required to remain in jail for committing a violation of probation until a hearing on the violation occurs.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Probation and Community Control

At sentencing for a criminal conviction, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.¹ Probation is a form of community supervision requiring specified contacts with a probation officer and other terms and conditions.² Community control is a more intensive form of supervision involving an individualized program that restricts the offender's movement within the community, home, or residential placement.³ Several standard conditions of probation or community control apply automatically, including requirements to report to a probation officer as directed and to live without violating any law.⁴ The court may also impose special conditions, such as community service hours, regular drug or alcohol testing, no contact orders, and treatment programs.⁵ Failure to meet any condition of supervision is a violation of probation or community control (VOP).

Generally, upon a finding that an offender violated probation or community control, the court may revoke, modify, or continue supervision.⁶ If the court chooses to revoke supervision, it may impose any sentence that was permissible at the offender's initial sentencing.⁷ Upon revocation of supervision, the court is bound by the sentencing guidelines under the Criminal Punishment Code.⁸ The sentencing guidelines provide a formula for computation of the lowest permissible prison sentence, based on a number of factors such as the offender's current and prior offenses. If an offender's probation is revoked and the court sentences the offender under the sentencing guidelines, the number of violations of probation an offender has committed are factored into the sentencing formula as a "community sanction violation."⁹ The court must make written findings, contemporaneous with sentencing for the revocation of supervision, to justify a downward departure and sentence an offender to less than the lowest permissible sentence.¹⁰

If an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.¹¹ A VFOSC is a person who is on felony supervision:

- Related to a qualifying offense¹² committed on or after March 12, 2007.

¹ S. 948.01, F.S.

² S. 948.001(8), F.S.

³ S. 948.001(3), F.S.

⁴ S. 948.03(1), F.S.

⁵ S. 948.03(2), F.S.

⁶ S. 948.06(2)(b), F.S.

⁷ *Id.*

⁸ S. 921.0022, F.S.

⁹ S. 921.0024, F.S.

¹⁰ *State v. Roman*, 634 So. 2d 291 (Fla. 1st DCA 1994).

¹¹ S. 948.06(8)(e)2.b., F.S.

¹² Section 948.06(8)(c), F.S., defines qualifying offense to include any of the following: kidnapping or attempted kidnapping, s. 787.01, F.S.; false imprisonment of a child under the age of 13, s. 787.02(3), F.S.; luring or enticing a child, s. 787.025(2)(b) or (b), F.S.; murder or attempted murder, s. 782.04, F.S.; attempted felony murder, s. 782.051, F.S.; manslaughter, s. 782.07, F.S.; aggravated battery or attempt, s. 784.045, F.S.; sexual battery or attempt, s. 794.011(2), (3), (4), or (8)(b) or (c), F.S.; lewd and lascivious battery or attempt, s. 800.04(4); lewd and lascivious molestation, s. 800.04(5)(b) or (c), F.S.; lewd and lascivious conduct, s. 800.04(6)(b), F.S.; lewd and lascivious exhibition, s. 800.04(7)(b); lewd and lascivious exhibition on computer, s. 847.0135(5)(b); robbery or attempt, s. 812.13, F.S.; carjacking or attempt, s. 812.133, F.S.; home invasion robbery or attempt, s. 812.135, F.S.; lewd and lascivious offense upon or in the presence of an elderly person or attempt, s. 825.1025, F.S.; sexual performance by a child or attempt, s. 827.071, F.S.; computer pornography, s. 847.0135(2) or (3), F.S.; transmission of child pornography, s. 847.0137, F.S.; selling or buying of minors, s. 847.0145, F.S.; poisoning food or water, s. 859.01, F.S.; abuse of a dead human body, s. 872.06, F.S.; any burglary offense that is a first or second degree felony, s. 810.02(2) or (3), F.S.; arson or attempt, s. 806.01(1), F.S.; aggravated assault, s. 784.021, F.S.; aggravated

- For any offense committed on or after March 12, 2007, and has previously been convicted of a qualifying offense.
- For any offense committed on or after March 12, 2007, and is found to have violated that supervision by committing a qualifying offense.
- After previously being found by a court to be a habitual violent felony offender,¹³ three-time violent offender,¹⁴ or sexual predator,¹⁵ and has committed a qualifying offense on or after March 12, 2007.¹⁶

When a person is arrested for committing a crime, he or she is generally entitled to pretrial release on reasonable conditions under the Florida Constitution.¹⁷ However, a person taken into custody for a VOP does not have a constitutional right to release pending the disposition of the VOP.¹⁸ If the offender qualifies as a VFOSC, the court is prohibited from granting pretrial release.¹⁹

Alternative Sanctioning Program

In 2019, the Legislature standardized a statewide alternative sanctioning program (ASP), allowing the Department of Corrections to enforce technical violations with court approval.²⁰ A technical violation is any alleged VOP that is not a new felony, misdemeanor, or criminal traffic offense. The ASP ensures a swift and certain response to technical violations without initiating the court process or arresting and booking the offender. After receiving written notice of an alleged technical violation and disclosure of the evidence supporting the violation, an offender who is eligible for the ASP may either elect to participate in the program or waive participation.²¹ If the offender waives participation, the violation proceeds through the court resolution process.²² A court may also disqualify a person from the ASP when initially sentencing him or her to probation.

The ASP identifies eligible offenders, eligible violations, and permissible sanctions. Eligible violations are classified as either low- or moderate-risk.

Low-risk violations only apply to probationers, not offenders on community control, and include:

- A positive drug or alcohol test result;
- Failure to report to the probation office;
- Failure to report a change in address or other required information;
- Failure to attend a required class, treatment or counseling session, or meeting;
- Failure to submit to a drug or alcohol test;
- Violation of curfew;
- Failure to meet a monthly quota for any required probation condition, including making restitution payments, paying court costs, and completing community service hours;
- Leaving the county without permission;
- Failure to report a change in employment;
- Associating with people engaged in criminal activity; or
- Any other violation as determined by administrative order of the chief judge of the circuit.²³

stalking, s. 784.048(3), (4), (5), or (7), F.S.; aircraft piracy, s. 860.16, F.S.; throwing a deadly missile, s. 790.161(2), (3), or (4), F.S.; and treason, s. 876.32, F.S.

¹³ S. 775.084(1)(b), F.S.

¹⁴ S. 775.084(1)(c), F.S.

¹⁵ S. 775.21, F.S.

¹⁶ S. 948.06(8)(b), F.S.

¹⁷ Art. I, s. 14, Fla. Const. Exceptions include when a person is charged with a capital offense or offense punishable by life and the proof of guilt is evident or the presumption is great, or if no conditions can reasonably protect the community from risk of physical harm.

¹⁸ *Bernhardt v. State*, 288 So. 2d 490, 497 (Fla. 1974).

¹⁹ S. 903.0351, F.S.

²⁰ S. 948.06(9), F.S.

²¹ S. 948.06(9)(g), F.S.

²² S. 948.06(9)(h)1.a., F.S.

²³ S. 948.06(9)(b), F.S.

Moderate-risk violations include:

- Any violation classified as low-risk when committed by an offender on community control;
- Failure to remain at an approved residence by an offender on community control;
- A third low-risk violation by a probationer; or
- Any other violation as determined by administrative order of the chief judge of the circuit.²⁴

The permissible sanctions correspond to the violation risk level. For example, a probation officer may impose sanctions such as additional community service hours, counseling or treatment, drug testing, or curfew in response to a low-risk violation.²⁵ In response to a moderate-risk violation, examples of additional sanctions include residential treatment or electronic monitoring for up to 90 days or a maximum jail sentence of up to 21 days.²⁶ Such responses are designed to be proportional to the severity of the technical violation and to directly respond to the nature of the technical violation.

Offenders are disqualified from alternative sanctioning under any of the following circumstances:

- The offender is a violent felony offender of special concern;
- The violation is a felony, misdemeanor, or criminal traffic offense;
- The violation is absconding;
- The violation is of a stay-away order or no-contact order;
- The violation is not identified as low- or moderate-risk by statute or administrative order;
- The offender has a prior moderate-risk level violation during the same term of supervision;
- The offender has three prior low-risk level violations during the same term of supervision;
- The term of probation is scheduled to terminate in less than 90 days; or
- The terms of the sentence prohibit alternative sanctioning.²⁷

The ASP is voluntary, and the offender may withdraw from participation at any time. Successful completion of an ASP does not affect an offender's withheld adjudication. If the offender withdraws or fails to complete a sanction within either 90 days or a timeframe determined in the agreed-upon sanction, the original VOP proceeds to the court resolution process.

Effect of the Bill

Assessment of Points for a Community Sanction Violation

The bill amends s. 921.0024, F.S., to prohibit any violation of probation that was resolved through the ASP from being assessed as community sanction violations points and being used in determining an offender's lowest permissible sentence of incarceration if the offender's probation has been revoked.

Alternative Sanctioning Program

The bill amends s. 948.06, F.S., to *require*, rather than allow, a probation officer to proceed with the ASP in lieu of filing an affidavit of violation with the court if the probationer or offender commits a first or second low-risk violation, unless the probation officer is directed by the court to file an affidavit of violation.

For a first or second low-risk violation, the bill requires a court to impose the sanction recommended by a probation officer unless the court finds a specific, identified risk to public safety, in which case the court may direct the probation officer to submit a probation violation report, affidavit, and warrant to the court.

Release from Jail Pending Resolution of Violation

²⁴ S. 948.06(9)(c), F.S.

²⁵ S. 948.06(9)(e), F.S.

²⁶ S. 948.06(9)(f), F.S.

²⁷ S. 948.06(9)(d), F.S.

Under the bill, if a probationer or offender is arrested for committing a low-risk violation, a court must, within 30 days of such arrest or after counsel appears for the probationer or offender, give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel. If a hearing is not held within 30 days after arrest or after counsel appears for the probationer or offender, whichever occurs later, the court must release the probationer or offender without bail unless the court finds that a hearing was not held in the applicable time frame due to circumstances attributable to the probationer or offender. Under the bill, a court may impose nonmonetary conditions of release if the probationer or offender is released without bail.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill prohibits community sanction points from being assessed if a probationer or offender resolves a violation of probation through the ASP and requires a probationer or offender who commits a low-risk violation to be released within 30 days if a violation hearing does not occur. Thus, the bill may have a negative indeterminate jail and prison bed impact to the extent such probationers or offenders would otherwise be sentenced to a longer term of incarceration for committing a community sanction violation or would otherwise be required to remain in jail for committing a violation of probation until a hearing on the violation occurs.