

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1088

INTRODUCER: Criminal Justice Committee and Senator Rodrigues

SUBJECT: Modification or Continuation of Terms of Probation

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Siples</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1088 amends s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *all*, rather than *any*, of the following applies:

- The term of supervision is probation;
- The probationer does not qualify as a violent felony offender of special concern (VFOSC);
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.; and
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

The bill is effective upon becoming a law.

II. Present Situation:

Probation Supervision through the Department of Corrections

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.¹ The Department of Corrections (DOC) supervises more than 164,000 offenders on active community supervision. This includes offenders released from prison on

¹ Section 948.01, F.S.

parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.²

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose to ensure the offender's compliance with the terms of the sentence and the safety to the community.³ Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

Violations of Probation

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.⁴ A violation of probation (VOP) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.⁵

The offender must be returned to the court granting such probation.⁶ Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.⁷

Upon a finding through a VOP hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.⁸ In addition, if an offender qualifies as a VFOSC, the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.⁹ The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.¹⁰

² The DOC, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 5, 2021).

³ Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.

⁴ Section 948.10(3), F.S.

⁵ Section 948.06(1)(a), F.S.

⁶ *Id.*

⁷ Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the probationer or controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.

⁸ Section 948.06(2)(b), F.S.

⁹ See s. 948.06(8)(a), F.S., for all VFOSC qualifications and the enumerated list of felonies that are considered qualifying offenses. See also ch. 2007-2, L.O.F.

¹⁰ Section 921.0024, F.S.

CS/HB 7125 (2019)

Prior to October 1, 2019, the effective date for section 63 of CS/HB 7125 (2019),¹¹ the sentencing court had the complete discretion to determine whether to continue, modify, or revoke an offender's probation subsequent to a violation of probation.¹² However, in part, CS/HB 7125 (2019) amended s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *any* of the following applies:

- The term of supervision is probation.
- The probationer does not qualify as a VFOSC.
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.¹³
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

Further, if the court is required to modify or continue the probationary term, the court may include in the sentence a maximum of 90 days in county jail as a special condition of probation.¹⁴

CS/HB 7125 (2019) also provided that if a probationer has less than 90 days of supervision remaining on his or her term of probation and meets the criteria for mandatory modification or continuation, the court may revoke probation and sentence the probationer to a maximum of 90 days in county jail.¹⁵

However, the intent for this provision was to require modification or continuation of probation only when *all* of the enumerated circumstances were present.

Several courts have addressed the issue in cases in which the probationer has argued that the plain reading of the statute requires that only one of conditions listed is met, rather than all. Courts have generally held that the literal reading of the statute would lead to an absurd result, as all probationers would meet the first condition listed, being sentenced to a term of probation, and nullifying the subsequent conditions listed.¹⁶

¹¹ Chapter 2019-167, L.O.F.

¹² See s. 948.06, F.S. (2018).

¹³ Section 948.06(9)(b), F.S., defines a "low-risk violation" to mean any of the following: 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; a violation of curfew; failure to meet a monthly quota on any required probation condition, including, but not limited to, making restitution payments, paying court costs, or completing community service hours; leaving the county without permission; failure to report a change in employment; associating with a person engaged in criminal activity; or any other violation as determined by administrative order of the chief judge of the circuit.

¹⁴ Section 948.06(2)(f)2., F.S.

¹⁵ See s. 948.06(2)(f)3., F.S.

¹⁶ See *Kirk v. State*, 303 So.3d 604, 606 (Fla. 1st DCA 2020); *Owens v. State*, 303 So.3d 993, 998 (Fla. 5th DCA 2020); and *Massey v. State*, 2021 WL 128212 (Fla. 1st DCA 2021).

III. Effect of Proposed Changes:

The bill amends s. 948.06, F.S., providing that the court must modify or continue a probationary term upon finding a probationer in violation when *all*, rather than *any*, of the following applies:

- The term of supervision is probation;
- The probationer does not qualify as a violent felony offender of special concern (VFOSC);
- The violation is a low-risk technical violation, as defined in s. 948.06(9)(b), F.S.; and
- The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.

The bill is effective upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill appears to be exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 948.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 9, 2021:

The committee substitute corrects a grammatical error.

B. Amendments:

None.