

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 Fiscal Policy

BILL: CS/SB 1478

INTRODUCER: Criminal Justice Committee and Senator Simon

SUBJECT: Criminal Sentencing

DATE: April 24, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Stokes	CJ	Fav/CS
2. Atchley	Harkness	ACJ	Favorable
3. Erickson	Yeatman	FP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1478 revises provisions related to probation and the alternative sanctioning program (ASP) under s. 948.06(9), F.S., and scoring of community sanction violation points under the Criminal Punishment Code (Code). The bill:

- Prohibits assessment of community sanction violation points under the Code if the violation is resolved through the ASP. If not resolved, no points are assessed for prior violations that were resolved through the ASP.
- Requires a probation officer to proceed with the ASP in lieu of filing an affidavit of violation with the court if the probationer is eligible for the ASP and the violation is a first or second low-risk violation, unless the probation officer is directed by the court to file an affidavit of violation.
- Provides that a probation violation resulting from an arrest for certain misdemeanor offenses may be considered a technical violation of probation and is eligible to be resolved through the ASP, and provides that these offenses are considered a moderate-risk violation for purposes of determining sanctions under the ASP.
- Provides that if the violation is a moderate-risk violation involving an eligible misdemeanor offense, the state attorney must consent to the offer of an alternative sanction.
- For a first or second low-risk violation, requires a court to impose the sanction recommended by a probation officer, unless the court finds 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.

- Requires a court to modify probation if a person meets criteria for mandatory modification, including that the violation is a low-risk violation and a court has not, on two or more separate occasions, found the probationer in violation of his or her probation. A person who previously has been found by a court to be in violation of his or her probation is currently excluded from mandatory modification of probation.
- Limits the jail sentence a court may impose for a violation to 90 days for a first violation and 120 days for a second violation.
- Requires a court to release without bail a probationer with a low-risk violation (as defined in criteria for mandatory modification of probation), if no hearing is held within 20 days after the probationer's arrest. A court may impose nonmonetary conditions of release if the probationer or offender is released without bail.

The bill may have a negative indeterminate prison impact and jail bed impact (a decrease in state prison beds and county jail beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2023.

II. Present Situation:

Probation and Community Control

Probation is a form of community supervision requiring specified contacts with a probation officer and other terms and conditions.¹ 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.²

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.³ The court may also impose special conditions, such as community service hours, regular drug or alcohol testing, no contact orders, and treatment programs.⁴ 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.⁵ If the court revokes supervision, it may impose any sentence that was permissible at the offender's initial sentencing.⁶

¹ Section 948.001(8), F.S.

² Section 948.001(3), F.S.

³ Section 948.03(1), F.S.

⁴ Section 948.03(2), F.S.

⁵ Section 948.06(2)(a), F.S.

⁶ Section 948.06(2)(b), F.S.

If a violent felony offender of special concern (VFOSC)⁷ commits a VOP and the court finds the VFOSC poses a danger to the community, the court must revoke probation and sentence the offender up to the statutory maximum, or longer if permitted by law.⁸

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.⁹ However, a person taken into custody for a VOP does not have a constitutional right to release pending the disposition of the VOP.¹⁰ If the offender qualifies as a VFOSC, the court is prohibited from granting pretrial release.¹¹

Alternative Sanctioning Program

Section 948.06(9), F.S., requires each judicial circuit to establish an alternative sanctioning program (ASP) as provided in that subsection. The chief judge of each judicial circuit may, by administrative order, define additional sanctions or eligibility criteria and specify the process for reporting technical violations through the alternative sanctioning program. Any sanctions recommended for imposition through an alternative sanctions program must be submitted to the court by the probation officer for approval before imposing the sanction.¹²

If a probationer or offender on community control commits a technical violation, the probation officer must determine whether the probationer or offender on community control is eligible for the ASP. If the probation officer determines that the probationer or offender on community control is eligible, the probation officer may proceed with the ASP in lieu of filing an affidavit of violation with the court. For purposes of s. 948.06, F.S., the term “technical violation” means an alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.¹³

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

⁷ A VFOSC is an offender who commits a specified qualifying offense or is in a special status like habitual violent felony offender and meets other specified criteria. Examples of qualified offenses include murder, kidnapping, and sexual battery. For a complete list of criteria, see s. 948.06(8), F.S.

⁸ Section 948.06(8)(e)2.a., F.S.

⁹ 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.

¹⁰ *Bernhardt v. State*, 288 So. 2d 490, 497 (Fla. 1974).

¹¹ Section 903.0351(1)(a), F.S.

¹² Section 948.06(9)(a), F.S.

¹³ Section 948.06(1)(c), F.S.

- 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.¹⁴

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.¹⁵

Participation in an ASP is voluntary¹⁶ However, in no circumstance does participation in an ASP convert a withhold of adjudication into an adjudication of guilt.¹⁷

If a probationer or offender on community control is eligible for the ASP, he or she may:

- Waive participation in the program, in which case the probation officer may submit a violation report, affidavit, and warrant to the court; or
- Elect to participate in the ASP after receiving written notice of an alleged technical violation and disclosure of the evidence against him or her, and admit the technical violation, agree to comply with the probation officer's recommended sanction if subsequently ordered by the court, and agree to waive the right to:
 - Be represented by legal counsel.
 - Require the state to prove his or her guilt before a neutral and detached hearing body.
 - Subpoena witnesses and present to a judge evidence in his or her defense.
 - Confront and cross-examine adverse witnesses.
 - Receive a written statement from a judge as to the evidence relied on and the reasons for the sanction imposed.¹⁸

If the probationer or offender on community control admits to committing the technical violation and agrees with the probation officer's recommended sanction, the probation officer must, before imposing the sanction, submit the recommended sanction to the court with documentation reflecting the probationer's admission to the technical violation and agreement with the recommended sanction.¹⁹

The court may impose the recommended sanction or direct the department to submit a violation report, affidavit, and warrant to the court.²⁰

¹⁴ Section 948.06(9)(b), F.S.

¹⁵ Section 948.06(9)(c), F.S.

¹⁶ Section 948.06(9)(g), F.S.

¹⁷ Section 948.06(9)(e)9.b. and (f)7.b., F.S.

¹⁸ Section 948.06(9)(h)1., F.S.

¹⁹ Section 948.06(9)(h)2., F.S.

²⁰ Section 948.06(9)(i), F.S.

If a probationer or offender on community control waives or discontinues participation in the program or fails to successfully complete all alternative sanctions within 90 days after imposition or within the timeframe specified in the agreed-upon sanction, the probation officer may submit a violation report, affidavit, and warrant to the court. A prior admission by the probationer or offender on community control to a technical violation may not be used as evidence in subsequent proceedings.²¹

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.²² 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.²³ 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 VFOSC;
- 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-risk 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.²⁴

Court Modification of Probation Order and Jail Term for Low-Risk Violation

Section 948.06(2)(f), F.S., requires a court to modify probation and imposes a 90-day jail cap for specified probationers appearing before a court for committing a low-risk technical violation. Unless waived by a defendant, a court is required to modify or continue a probationary term, when all of the following apply:

- The term of supervision is probation, rather than community control.
- The probationer does not qualify as a violent felony offender of special concern.
- The violation is a low-risk technical violation.
- The court has not previously found the probationer in violation of probation during the current term of supervision.

²¹ Section 948.06(9)(j), F.S.

²² Section 948.06(9)(e), F.S.

²³ Section 948.06(9)(f), F.S.

²⁴ Section 948.06(9)(d), F.S.

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 of probation, a court may revoke probation and sentence the probationer to 90 days in county jail.²⁵

Criminal Punishment Code and Community Sanction Violation Points

The Criminal Punishment Code²⁶ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).²⁷ Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates and points may also be added or multiplied for other enumerated factors. The lowest permissible sentence is when the total sentence points are equal to or less than 44 points is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If the total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by a specified formula.²⁸ Absent mitigation,²⁹ the permissible sentencing range under the Code is generally the lowest permissible sentence up to and including the maximum penalty provided under s. 775.082, F.S.³⁰

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

- If the community sanction violation includes a new felony conviction before the sentencing court, 12 community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.
- If the community sanction violation is committed by a VFOSC:
 - Twelve community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:
 - The violation does not include a new felony conviction; and
 - The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or make restitution payments.
 - Twenty-four community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new felony conviction.³¹

²⁵ Section 948.06(2)(f)3., F.S.

²⁶ Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

²⁷ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

²⁸ Section 921.0024, F.S., provides the formula is the total sentence points minus 28 times 0.75.

²⁹ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

³⁰ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

³¹ Section 921.0024(1)(b), F.S.

Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.³²

III. Effect of Proposed Changes:

Criminal Punishment Code and Community Sanction Violation Points

The bill amends s. 921.0024, F.S., to prohibit assessment of community sanction violation points under the Code in the following manner:

- If the community sanction violation is resolved through the alternative sanctioning program under s. 948.06(9), F.S., no points are assessed.
- If a community sanction violation not resolved through the ASP is before the court, no points are assessed for prior violations that were resolved through the ASP.

Alternative Sanctioning Program

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

The bill provides that a probation violation resulting from an arrest for certain misdemeanor offenses may be considered a technical violation of probation and eligible to be resolved through the ASP. An arrest for a misdemeanor offense *other* than the following offenses is considered a technical violation:

- Assault and battery (ch. 784, F.S.);
- Domestic violence (s. 741.28, F.S.);
- Driving under the influence (s. 316.193, F.S.);
- Violating a condition or pretrial release when the original arrest was for an act of domestic violence (s. 741.29, F.S.);
- Violating an injunction for protection against domestic violence (s. 741.31, F.S.);
- Violating a condition of pretrial release when the original arrest was for an act of dating violence (s. 784.046, F.S.);
- Violating an injunction for protection against repeat violence, sexual violence, or dating violence (s. 784.047, F.S.);
- Stalking or cyberstalking (s. 784.048, F.S.);
- Violating an injunction for protection against stalking or cyberstalking (s. 784.0487, F.S.);
- Sexual cyberharassment (s. 784.049, F.S.);
- Luring or enticing a child into a dwelling, structure, or conveyance (s. 787.025, F.S.); or
- A criminal traffic offense *other* than a misdemeanor violation for driving with a suspended license under s. 322.34, F.S.

These offenses are considered a moderate-risk violation for purposes of determining sanctions under the ASP. If the violation is a moderate-risk violation involving a misdemeanor *other* than a

³² *Id.*

misdeemeanor specified above, the state attorney must consent to the offer of an alternative sanction.

For a first or second low-risk violation, a court must impose the sanction recommended by a probation officer unless the court finds 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.

Court Modification of Probation Order and Jail Term for Low-Risk Violation

A court must modify probation if a person otherwise meets the criteria for mandatory modification in s. 948.06(2)(f), F.S., and a court has not, on *two or more* separate occasions, found the probationer in violation of his or her probation. A person who has previously been found by a court to be in violation of his or her probation is currently excluded from mandatory modification of probation.³³

If a court previously found a probationer in violation of probation and modified probation by sentencing a probationer to up to 90 days in county jail as a special condition of probation, the court may only sentence the probationer to up to 120 days in county jail as a special condition of probation for a second violation of probation. If a probationer has less time on supervision than the number of days which the court is authorized to sentence the probationer, the court may revoke probation and sentence the probationer to a maximum of either 90 days or 120 days in county jail, as applicable.

Court Hearing on Violation and Bail

If a probationer is arrested for a low-risk violation, a court must, within 20 days of such arrest, give the probationer an opportunity to be fully heard on his or her behalf in person or by counsel. If no hearing is held within 20 days after the probationer's arrest, the court must release the probationer without bail. A court may impose nonmonetary conditions of release if the probationer or offender is released without bail.

The bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

³³ Section 948.06(9)(f)1.d., F.S.

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:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

The bill may have a negative indeterminate prison impact and jail bed impact (a decrease in state prison beds and county jail beds). The bill contains changes which appear to ameliorate prison and jail sentencing.

In regard to state prison beds, the bill prohibits assessment of community sanction violation points under the Code if the violation is resolved through the ASP. If not resolved, no points are assessed for prior violations that were resolved through the ASP.

In regard to jail bed impact, the bill:

- Increases eligibility to resolve a probation violation through the ASP;
- Requires a court to modify a person's probation if he or she commits a second violation of probation and meets specified criteria and caps a probationer's jail sentence if a person commits such a violation at 120 days; and
- Requires a probationer who commits a low-risk violation to be released within 20 days if a violation hearing does not occur.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.0024 and 948.06.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 4, 2023:

The committee substitute:

- Removes reference to “criminal traffic offense” in a provision relating to bail; and
- Provides that if a moderate risk violation is an eligible misdemeanor, the state attorney must consent to the offer of an alternative sanction.

- B. **Amendments:**

None.