

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 575 Violations Of Probation or Community Control

**SPONSOR(S):** Criminal Justice Subcommittee; Caldwell and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	Toms	Jones Darity
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 948.03, F.S., contains a standard condition requiring probationers to live without violating the law. Thus, if a person on probation is arrested for a new criminal offense, that person can also be arrested for violating the terms of probation. Section 948.06, F.S., sets forth two ways in which a probationer can be arrested for violating probation:

- Whenever there are reasonable grounds to believe that a probationer has violated his or her probation in a material respect, a law enforcement officer who is aware of the probationary status of the probationer or a probation supervisor may arrest the probationer without a warrant and return him or her to the court granting such probation.
- A probation officer may file an affidavit with the court alleging a violation of probation. After the court evaluates the facts alleged in the affidavit, the court may issue a warrant for the probationer's arrest or in some instances, a notice to appear.

The bill provides a third way in which a probationer can be arrested for violating probation:

- The court may order the arrest of a probationer pursuant to the court's finding of probable cause that the probationer has committed a new law violation and that there exist reasonable grounds to believe that the probationer or offender has therefore violated his or her probation in a material respect.

The bill also allows the court to consider the likelihood of a prison sanction on the violation of probation based on the new law violation as a factor in determining bail.

The bill does not appear to have a fiscal impact, see "Fiscal Comments" section.

The effective date is October 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### **Probation**

Section 948.01, F.S., provides the circumstances under which the trial court can place a person on probation<sup>1</sup> or community control<sup>2</sup> (probation). Any person who is found guilty by a jury, the court sitting without a jury, or enters a plea of guilty or nolo contendere may be placed on probation regardless of whether adjudication is withheld.<sup>3</sup>

The Department of Corrections supervises all probationers sentenced in circuit court.<sup>4</sup> Section 948.03, F.S., provides a list of standard conditions of probation. In addition to the standard conditions of probation, the court may add additional conditions of probation that it deems proper.<sup>5</sup>

Section 948.06, F.S., provides procedures regarding violation of the terms and conditions required of a person on probation. Upon violation, the probationer is arrested and brought before the sentencing court. At the first hearing on the violation, the probationer is advised of the charge. If the probationer admits the charge, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.<sup>6</sup>

If the probationer denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation.<sup>7</sup> Unless dismissed, the court must conduct a hearing and determine whether the probationer has violated the terms of his or her probation.<sup>8</sup> If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.<sup>9</sup>

If probation is revoked, the court must adjudicate the probationer guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed for the offense for which the probationer was placed on probation or into community control.

##### **Probation Violations – Bail**

As noted above, probationers arrested for violating the terms and conditions of probation are arrested and brought before the sentencing court. Generally, if the probationer denies having violated the terms of probation, the court has the option to commit the probationer to jail, release the probationer with or without bail to await further hearing, or dismiss the charge.

In certain instances, courts are limited or prohibited from granting bail to probationers arrested for violating their terms of probation. Section 948.06(4), F.S., requires the court to make a finding that the following probationers are not a danger to the public before releasing the probationer on bail:

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<sup>1</sup> Section 948.001(5), F.S., defines “probation” as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

<sup>2</sup> Section 948.001(3), F.S., defines “community control” as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

<sup>3</sup> Section 948.01(1), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 948.03(2), F.S.

<sup>6</sup> Section 948.06(2)(a), F.S.

<sup>7</sup> Section 948.06(2)(c), F.S.

<sup>8</sup> Section 948.06(2)(d), F.S.

<sup>9</sup> Section 948.06(2)(e), F.S.

- Probationers who are under supervision for any offense prescribed in ch. 794., s. 800.04(4), (5), and (6), s. 827.071, or s. 847.0145, F.S.
- Probationers who are registered sexual offenders or sexual predators.
- Probationers who are under supervision for a criminal offense for which the offender would meet the sexual predator or sexual offender registration requirements in ss. 775.21, 943.0435, or 944.607, F.S., but for the effective date of those sections.

Courts are prohibited from granting pretrial release to probationers arrested for violating their terms of supervision (other than violations related to a failure to pay costs) who are:

- A violent felony offender of special concern;<sup>10</sup>
- On supervision for any offense committed on or after March 12, 2007, and who are arrested for any qualifying offense;<sup>11</sup> or
- On supervision, have previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., a three-time violent felony offender as defined in s. 775.084(1)(c), F.S., or a sexual predator under s. 775.21, F.S., and who have been arrested for committing a qualifying offense on or after March 12, 2007.<sup>12,13</sup>

Such persons must remain in custody pending the resolution of the violation.<sup>14</sup>

### **New Law Violations**

Section 948.03, F.S., contains a standard condition requiring probationers to live without violating the law. Thus, if a person on probation is arrested for a new criminal offense, that person can also be arrested for violating the terms of probation.

Two separate and distinct court cases are initiated when a probationer is arrested for committing a new offense. The first case (new offense case) involves the new offense that the probationer is alleged to have committed. The second case (VOP case) involves the violation of probation that the probationer is alleged to have committed. In most instances, the new offense case is initiated, and later, once the probationer's supervising officer is made aware that the probationer was arrested for committing a new crime, the VOP case is initiated.

As noted above, a judge handling a probationer's VOP case has the option of granting bail to a probationer arrested for violating the terms of probation (unless the probationer meets the criteria outlined above.) The judge handling the new offense case also has the option of granting bail to the probationer. In determining whether to grant such bail and what the bail amount should be, judges are permitted to consider a variety of factors, including whether the defendant is on probation, parole, or other release pending completion of a sentence.<sup>15</sup>

### **Authority to Arrest a Probationer for a Probation Violation**

Section 948.06, F.S., sets forth two ways in which a probationer can be arrested for violating probation.

- Whenever there are reasonable grounds to believe that a probationer has violated his or her probation in a material respect, a law enforcement officer who is aware of the probationary status of the probationer or a probation supervisor may arrest the probationer without a warrant and return him or her to the court granting such probation.

<sup>10</sup> The term "violent felony offender of special concern" is defined in s. 948.06(8)(b), F.S.

<sup>11</sup> The term "qualifying offense" is defined in s. 948.06(8)(c), F.S., and includes offenses that qualify someone as a sexual offender.

<sup>12</sup> Section 903.0351(2), F.S., provides that subsection (1) shall not apply where the alleged violation of felony probation or community control is based only on the probationer's failure to pay costs or fines or make restitution payments.

<sup>13</sup> Section 903.0351(1), F.S.

<sup>14</sup> Section 948.06(8)(d), F.S.

<sup>15</sup> Section 903.046, F.S.

- Alternatively, a probation officer may file an affidavit with the court alleging a violation of probation. After the court evaluates the facts alleged in the affidavit, the court may issue a warrant for the probationer's arrest or in some instances, a notice to appear.

### **Effect of the Bill**

The bill amends s. 948.06, F.S., to provide a third way in which a probationer can be arrested for violating probation:

- The court may order the arrest of a probationer pursuant to the court's finding of probable cause that the probationer has committed a new law violation and that there exist reasonable grounds to believe that the probationer has therefore violated his or her probation in a material respect.

The bill requires the court to advise the probationer of the charge of the violation upon arrest and at first appearance on the violation and may order the probationer to be brought before the court that granted the probation.

However, if the violation is not admitted, the court may commit the probationer or release him or her with or without bail to await further hearing. Current law contains similar provisions.<sup>16</sup> The court may also order the probationer to be returned to the court granting such supervision.

The bill allows the court to consider whether the person will receive a prison sanction for violating the terms of probation based on the arrest for the new violation of law during bail determination on the violation. This provision is similar to what is already allowed by current law.<sup>17</sup>

The bill specifies that its provisions do not apply to a probationer or offender on community control who is subject to the hearing requirements under subsection 948.06(4) or paragraph 948.06(8)(e), F.S.

## **B. SECTION DIRECTORY:**

Section 1. Provides this act may be cited as the "Officer Andrew Widman Act."

Section 2. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 3. Provides effective date of October 1, 2011.

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

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

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

Insignificant impact, see "Fiscal Comments."

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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

None.

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<sup>16</sup> These provisions are described above in "Background – Probation."

<sup>17</sup> See Section 903.046, F.S., which provides that the court may consider the defendant's past or present conduct and record of convictions in determining the bail amount for the new criminal offense.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of State Courts Administrator's analysis of this bill states will not have a significant impact on the State Courts System.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment clarifies the language and intent of the bill.

This analysis is drafted to the Committee Substitute.