SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 14, 1998 Revised: _____ _____ _____ _____

Subject: Offenders Under Correctional Supervision

	Analyst	Staff Director	Reference	Action
1.	Barrow	Miller	CJ	Favorable/CS
2.			JU	
3.			WM	
4.				
5.				

I. Summary:

The CS adds conditions to the standard conditions of probation and community control that are not required to be pronounced by a sentencing judge to be enforceable. For any offense, a probationer must submit to a search if requested by a supervising officer. For offenses involving victims, the probationer may not have contact with the victim unless the court specifically authorizes and explains why contact should be allowed.

The CS establishes criteria by which evidence seized from a person on probation, community control, or other supervision may be admissible in trial despite the fact there was not a warrant to conduct the search of a home or probable cause to search the person. The CS would create statutory language that would provide that a supervising officer must still have had reason to believe that a person possessed the contraband in order for the evidence seized to be admitted into evidence at trial.

The CS prohibits evidence from being excluded or suppressed from a trial on a new substantive offense if certain circumstances exist.

This CS substantially amends the following sections of the Florida Statutes: 948.03 and 948.06.

II. Present Situation:

Section 948.03, F.S., lists the standard and discretionary conditions of probation and community control. Standard conditions do not need to be pronounced at sentencing because the conditions are provided for by the statute. Standard conditions of probation and community control include: reporting to a supervising officer, paying restitution and court costs, submitting to random drug

or alcohol testing as directed, refraining from carrying a firearm and refraining from consuming drugs or alcohol to excess.

Section 948.06, F.S., provides that a law enforcement officer or probation supervisor may make an arrest without a warrant if there are *reasonable grounds* to believe that a person on community control or probation violated a material condition of supervision.

Generally speaking, law enforcement must obtain a warrant that is signed by a judge by demonstrating probable cause in order to search a home or other property. There are exceptions to the requirement that there be a warrant for search and seizure. For instance, under exigent circumstances, a law enforcement officer may search a car or a person without a warrant. In such circumstances, the law recognizes that if an officer is faced with a situation where the officer has a reasonable belief that evidence of a crime may be destroyed or moved before the officer could obtain a search warrant, the officer may conduct a search without a warrant. An officer may also search the property of a person if that person gives voluntary consent to search the property. An officer can also enter property without the permission of the owner if evidence is within “plain view” which is within the sight of an officer and the officer is in a place that an ordinary person may be without having to do something extraordinary to see the item. In other words, an officer must have a “lawful vantage point” from which he can see the evidence of a crime or contraband. There is a requirement that it must be "immediately apparent" to an officer that the object to be seized under the "plain view" doctrine is contraband or evidence of crime. *See, Jones v. State*, 648 So.2d 669 (Fla. 1994).

If there is *probable cause* to arrest a person, then a lawful search may be done pursuant to arrest. A search of property which is within the immediate control of a person who is lawfully arrested or sufficiently contemporaneous with a person’s arrest, such as a search of an automobile, is authorized without a warrant. An inventory search may also be conducted on a car that is impounded where the driver has been lawfully arrested. The clothing of a person who is lawfully arrested may also be lawfully searched for the protection of the arresting officer.

Only reasonable suspicion that a person committed, is committing, or is about to commit a crime is necessary for an officer to *stop and detain* a person, whereby probable cause may develop during that detention which would, in turn, provide the basis by which a person may be arrested and searched pursuant to an arrest. If during a lawful and *temporary encounter* between a police officer and a citizen there are reasonable grounds that a citizen is carrying a dangerous weapon, a “frisk” of that citizen is allowed for the protection of the officer.

Evidence that is seized in violation of the general principles pertaining to lawful search and seizure would be suppressed unless the circumstances surrounding the search and seizure fell into one of the exceptions recognized in statute or case law.

However, the prohibition against unreasonable search and seizures in the Fourth Amendment of the United States Constitution offers a lesser degree of protection for people sentenced to supervision for committing a crime than it does for ordinary citizens. The Florida Constitution

requires that Florida's prohibition against unreasonable searches and seizures be construed in conformity with the Fourth Amendment of the United States Constitution, as interpreted by the United States Supreme Court.

The United States Supreme Court in *Griffin v. Wisconsin*, 483 U.S. 868 (1987), held that the warrantless search of a probationer's home was "reasonable" within the meaning of the Fourth Amendment of the United States Constitution because it was conducted pursuant to a valid Wisconsin law governing probationers:

> A warrant requirement would interfere to an appreciable degree with the probation system, setting up a magistrate rather than the probation officer as the judge as to the type of supervision the probationer requires. Moreover, the delay inherent in obtaining a warrant would make it more difficult for probation officials to respond quickly to evidence of misconduct . . . and would reduce the deterrent effect that the possibility of expeditious searches would otherwise create...By way of analogy, one might contemplate how parental custodial authority would be impaired by requiring judicial approval for search of a minor child's room. *Griffin* at 483 U.S. 868, 876.

In *Griffin*, the "reasonable grounds" for the search was an unsubstantiated tip by a police officer that contraband was in the defendant's home. The United States Supreme Court held that the "tip" was sufficient reason for the search, even though the "tip" would ordinarily not be sufficient grounds to obtain a warrant to search a home. Thus, the trial court's decision not to suppress the contraband was affirmed.

The Wisconsin state law regulating probationers in the *Griffin* case provided, in part, that any probation officer may search a probationer's home without a warrant as long as his supervisor approves and as long as there are "reasonable grounds" to believe there is contraband in the home. Another provision of Wisconsin law makes it a violation of the terms of probation to refuse to consent to a home search.

In *Soca v. State*, 673 So.2d 24 (Fla. 1996), the Florida Supreme Court reversed the trial court decision for not suppressing evidence of a controlled substance. In *Soca* a probation supervisor decided to conduct a search of a probationer's home because an investigator provided a tip that a probationer was dealing cocaine, and the same probationer had previously tested positive for cocaine. The Florida Supreme Court held that the cocaine discovered by the warrantless search could not be used as evidence in a trial for a new substantive offense, but it could be used to prove a violation of the probation that the offender was subject to when the drugs were found, which is consistent with *Grubbs v. State*. 373 So.2d 905 (Fla. 1979). The Florida Supreme Court reasoned that the United States Supreme Court's decision in *Griffin* did not apply because, "Florida's statutes contain no scheme expressly authorizing or regulating the authority of probation officers... to conduct a probationary search for contraband when the search is supported by "reasonable grounds."

It could be argued from the decisions in *Grubbs*, *Griffin*, and *Soca*, that the absence of the following two provisions in Florida Statutes would not allow evidence of a warrantless search of a probationer's home to be used against a person in a trial for a new substantive offense resulting from that search:

1. Florida does not have a law that explicitly permits a probation officer to search a probationer's home without a warrant as long as there are reasonable grounds to believe contraband or items the probationer is not allowed to possess while on probation is present.

2. Florida does not have a law that makes it a violation of probation to refuse to consent to a home search.

III. Effect of Proposed Changes:

The CS would add the condition that any offender must consent to a search of his or her person, property, or residence as requested by the correctional probation officer, to offenders released to conditional release supervision after prison and parolees.

The CS would add the following conditions to the standard conditions of probation and community control that need not be pronounced by the trial court in order to be enforced:

1. For offenses involving victims, the probationer may not have contact with the victim unless the court specifically authorizes and explains why contact should be allowed.

2. For any offense, the probationer must consent to the search of his or her person, property, or residence as requested by the supervising probation officer. For this condition to expressly apply, the offender would have to receive notice by either the court or by the probation or community control officer. Under current case law, "standard" conditions, such as this condition being created in the CS and other conditions provided in s. 948.03, F.S., do not need to be orally pronounced by the court at sentencing, but would have to be included in the sentencing order issued by the court to be binding upon the offender anyway.

The CS would attempt to codify law that is currently provided in case law. The CS would allow any law enforcement officer who is requested by a probation or community control officer, or any probation or community control officer who is supervising the offender, to search the person or property of an offender on supervision without a search warrant if there are reasonable grounds to believe there is possession of contraband or a material violation of supervision. The use of evidence seized by a correctional probation officer who did not have reasonable grounds to conduct a search would be expressly limited to only hearings for a violation of supervision.

The CS would prohibit evidence from being excluded or suppressed from *a trial for a new offense* if the following conditions are met:

1. The defendant was on probation, community control, control release, or conditional release at the time of the offense, *and*
2. There were reasonable grounds to believe the defendant was in violation of the law or in violation of the terms of his or her supervision.

"Reasonable grounds" would be defined as the reasonable suspicion standard for purposes of searching the person or property of a person on community supervision without a warrant.

The CS would also prohibit evidence from being excluded from a *violation of probation or community control hearing* if there were reasonable grounds (suspicion) to believe that the offender was in violation of the law or the terms of his or her community supervision.

The CS would also prohibit evidence from being excluded because there is no reasonable suspicion for the search, if the person searched was subject to random searches as a condition of supervision for a previous offense involving firearms or controlled substances.

The CS would take effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on March 20, 1998, to determine the impact of this bill upon the prison system. At that time it was determined that the impact upon Florida's prison system was indeterminate. However, it was noted by the Conference that the bill would have a significant fiscal impact upon the court system. It was anticipated that there would be a significant increase in the number of violation of probation hearings as well as an increase in the number of new offenses that would be prosecuted as a result of the searches that would be authorized by this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The United States Supreme Court in *Griffin v. Wisconsin*, upheld a probationary scheme that provided the following items:

1. The scheme explicitly permitted a probation officer to search a probationer's home without a warrant, as long as there were reasonable grounds to believe contraband or items the probationer was not allowed to posses were present.

2. The approved scheme made it a violation of probation to refuse to consent to a home search.

3. The approved scheme provided factors to be considered to determine whether the supervising officer had "reasonable grounds" to search a person on probation.

The Florida Supreme Court in *Soca v. State*, 673 So.2d 24 (Fla. 1996), determined that evidence had to be suppressed because Florida did not have a probationary scheme like the one in Wisconsin that included the above factors. The bill provides for the first two criteria above, but not the third. The third criteria could be provided by agency rule. In fact, the entire probationary scheme in Wisconsin that was approved by the United States Supreme Court was created by rule in Wisconsin. The anticipated strike-everything amendment defines reasonable grounds to mean that the courts are to apply the reasonable suspicion standard which is clearly and exhaustively defined in case law. Reasonable suspicion is the broadest and most permissive standard the courts are likely to accept for admitting evidence in a new trial against a person on supervision.

The majority of federal appellate courts have held that exclusionary rule does not apply in a hearing for a violation of probation regardless of whether the search was reasonable. *United States v. Bazzano*, 712 F.2d 826 (3rd Cir. 1982). The Florida Supreme Court currently requires that the search of a probationer's home or person be "reasonable." *State v. Grubbs* 373 So.2d 905, 908 (Fla. 1979). However, the reasonableness standard has been interpreted very broadly when it comes to exclusion of evidence in a violation of probation hearing. *State v. Cross*, 487

So.2d 1056 (Fla. 1986)(See Justice Overton's concurring opinion). The Florida Supreme Court may decide that the exclusionary rule applies to hearings for violation of supervision despite the provisions of this bill, however, such a decision may be appealed to the United States Supreme Court. Generally, the courts are willing to limit the benefits of the Fourth Amendment of the United States Constitution for people on supervision because the conditions of supervision are not nearly as restrictive as prison. *Grubbs* at 909.

VIII. Amendments:

None.