

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1149 Alternative Sanctioning

SPONSOR(S): Criminal Justice Subcommittee; Spano; and Edwards

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Aziz	White
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee	18 Y, 0 N	Aziz	Havlicak

SUMMARY ANALYSIS

Any person who is found guilty by a jury or the court sitting without a jury, or who enters a plea of guilty or nolo contendere may be placed on probation regardless of whether adjudication is withheld. Section 948.06, F.S., provides procedures regarding a violation of the terms and conditions imposed on a person who is 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.

The bill creates an alternative sanctioning program ("program") for technical violations of probation. The bill defines "technical violation" as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and Department of Corrections, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

An eligible probationer who commits a technical violation may choose to participate in the program and admit to the violation, comply with a probation officer's recommended sanctions, and waive his or her right to a hearing on the violation. A probation officer's recommended alternative sanction must be reviewed by the court, which may approve the sanction or remove the probationer from the program.

The Criminal Justice Impact Conference met on January 29, 2016, and found the bill will have an indeterminate impact on prison beds. However, since the bill offers alternatives to returning someone under community supervision to prison for a technical violation it will likely decrease the need for prison beds.

The bill is effective July 1, 2016.

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 probation¹ or community control² (collectively, hereinafter referred to as “probation”). Any person who is found guilty by a jury or the court sitting without a jury or who enters a plea of guilty or nolo contendere may be placed on probation regardless of whether adjudication is withheld.³

The Department of Corrections (“Department”) supervises all probationers sentenced in circuit court.⁴ 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.⁵

Section 948.06, F.S., provides procedures regarding a 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.⁶

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.⁷ Unless dismissed, the court must conduct a hearing and determine whether the probationer has violated the terms of his or her probation.⁸ If the court finds that the probationer has violated, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.⁹

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.

Technical Violations

Section 948.06(1)(g), F.S., describes technical violations as a violation of probation that is not a new felony or misdemeanor.¹⁰ During Fiscal Year 2014-15, approximately 94,000 violation reports were submitted due to probation violations. Of this number, 61,777 (or 66%) were technical violations.¹¹ Because of overcrowded court dockets, it often takes weeks and multiple hearings for a probationer to be sentenced as the result of a violation of probation. If the probationer is charged with a technical violation, these hearings often result in the court reinstating or modifying the probation with additional

¹ 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.

² 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.

³ s. 948.01(1), F.S.

⁴ *Id.*

⁵ s. 948.03(2), F.S.

⁶ s. 948.06(2)(a), F.S.

⁷ s. 948.06(2)(c), F.S.

⁸ s. 948.06(2)(d), F.S.

⁹ s. 948.06(2)(e), F.S.

¹⁰ Section 948.06(1)(g), F.S., allows the chief judge of each judicial circuit to direct the Department to use a notification letter for technical violations in lieu of a violation report, affidavit, and warrant.

¹¹ Department of Corrections, Agency Analysis 2016 House Bill 1149 p. 2 (Jan. 20, 2016).

sanctions imposed. If the probationer is held in jail pending a violation hearing, he or she may lose employment and be unable to pay victim restitution, attend treatment, or comply with supervision requirements.

In an effort to improve the violation of probation process, the Department's Office of Community Corrections developed the Alternative Sanctions Program to reduce recidivism for supervised probationers by utilizing collaborative efforts between courts, probation, and law enforcement. The program, created through administrative order in each circuit, allows a technical violation to be addressed immediately with the probationer through an administrative process.¹² Circuit court judges in 12 counties within six judicial circuits have agreed to implement the Alternative Sanctions Program via administrative order, including Alachua, Brevard, Desoto, Flagler, Manatee, Palm Beach, Pinellas, Putnam, Sarasota, Seminole, St. Johns, and Volusia.¹³

Effect of the Bill

The bill creates an alternative sanctioning program ("program") for technical violations of probation. The bill defines technical violations as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and the Department, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

If an eligible offender on probation is alleged to have committed a technical violation, the offender may either waive participation in the program or elect to participate. By participating in the program, the offender admits to the violation, agrees to the probation officer's recommended sanction, and waives 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; and
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.

Before imposing the sanction, the probation officer must submit the recommended sanction and documentation of the offender's admission of violation and agreement with the sanction to the court. The court has the discretion to impose the recommended sanction or to direct the Department to submit a violation report, affidavit, and warrant like a normal case not in the program. Any participation by the offender in the program is solely voluntary and the offender may elect to discontinue participation in the program as long as it is before the issuance of the court order imposing the recommended sanction. When an offender quits the program, the probation officer may submit a violation report, affidavit and warrant to the court concerning the violation. Any prior admission by the offender may not be used as evidence in subsequent proceedings.

The chief judge, in order to establish the program, must issue an administrative order specifying eligibility, which technical violations will be eligible for the program, which sanctions may be recommended by a probation officer, and the process for reporting violations of the program.

B. SECTION DIRECTORY:

Section 1. 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 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹² *Id.*

¹³ *Id.*

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on January 29, 2016, and found the bill will have an indeterminate impact on prison beds. However, since the bill offers alternatives to returning someone under community supervision to prison for a technical violation it will likely decrease the need for prison beds.

The Office of State Court Administration reports that the fiscal impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the bill's effects on judicial time and workload.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The Department reports that the bill may decrease expenditures by reducing law enforcement arrests, jail incarceration of offenders pending technical violation hearings, probation officer time spent at these violation hearings, and court personnel involved in the violation hearing process.¹⁵

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹⁴ Office of State Court Administrator, Agency Analysis of 2016 House Bill 1149, p. 2 (Jan. 16, 2016).

¹⁵ Department of Corrections, Agency Analysis 2016 House Bill 1149 p. 4 (Jan. 20, 2016).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment modified the definition of “technical violation” in the bill so that it only applies to that paragraph and not the entire section. This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.