

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 894

INTRODUCER: Senator Simmons

SUBJECT: Arrest Warrants for State Prisoners

DATE: April 24, 2017

REVISED: \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR  | REFERENCE | ACTION           |
|----|-----------------|-----------------|-----------|------------------|
| 1. | <u>Sumner</u>   | <u>Hrdlicka</u> | <u>CJ</u> | <b>Favorable</b> |
| 2. | <u>Parks</u>    | <u>Cibula</u>   | <u>JU</u> | <b>Favorable</b> |
| 3. | <u>Harkness</u> | <u>Hansen</u>   | <u>AP</u> | <b>Favorable</b> |

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## I. Summary:

SB 894 creates procedures to help state prisoners serve out sentences for violations of probation or community control while in prison for other crimes.<sup>1</sup> If a prisoner has an unserved warrant for arrest issued by another county for a violation of probation, the bill allows the prisoner to petition for a status hearing, where a state attorney informs the circuit court whether the prisoner does in fact have an unserved warrant for the violation.

If the prisoner has an unserved warrant, the bill provides that the court must order the state attorney to submit an order to send the prisoner to the issuing county's jail. The order must then be sent from the court to the local county sheriff to execute the prisoner's transport to the county that issued the probation warrant.

The bill has an indeterminate impact on state and local expenditures but will likely reduce local costs associated with intercounty prisoner transportation.

The bill has an effective date of July 1, 2017.

## II. Present Situation:

Sometimes a prisoner's arrest or imprisonment in one county also violates his probation in another county. The Department of Corrections estimates that, at any given time, approximately 20 state prisoners have unserved probation warrants.<sup>2</sup>

It is difficult for prisoners in this situation to serve their time for violating probation concurrently with their existing sentences, because their probation warrants have not been served. A state

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<sup>1</sup> "Probation" should be read to mean "probation and/or community control" for the remainder of this analysis, as the two mechanisms are treated the same by the caselaw, the existing Florida Statutes, and this bill.

<sup>2</sup> Dep't of Corrections, *Agency Analysis to HB 1091* (2017).

prisoner has no right to force a hearing on a probation violation.<sup>3</sup> Florida appellate courts have held that a probationer is only entitled to a hearing on a violation after he or she has been arrested and returned to the county alleging the violation.<sup>4</sup>

When a prisoner's arrest in one county violates his or her probation in another county, the latter county may file a detainer. A detainer instructs the holding county to either (a) hold the prisoner for the county filing the detainer, or (b) inform the county filing the detainer when the prisoner is about to be released.<sup>5</sup>

The Florida Supreme Court has ruled that a detainer generally does not result in accrual of time served for the probation violation because a detainer is not the same as an arrest warrant.<sup>6</sup> As a result, a prisoner can leave prison in one county, then be arrested for violating his or her probation in another county.

The Second District Court of Appeal has ruled that a trial court has no duty to conduct hearings on warrants for probation violations, especially when the defendant is not imprisoned in the same county as the court.<sup>7</sup>

### **III. Effect of Proposed Changes:**

#### **Probation**

The bill creates new procedures to be used by a prisoner who has an unserved warrant for arrest due to a probation violation. Such a prisoner may file a notice of an unserved warrant in the circuit court for the county that he or she claims issued the probation warrant.<sup>8</sup> The prisoner must notify the state attorney in the county that issued the warrant, and the state attorney must then schedule a "status hearing" regarding the prisoner within 90 days. The status hearing is attended only by the state attorney and the judge; the prisoner may not be transported to the hearing.

During the hearing, the state attorney informs the judge whether the prisoner has an unserved warrant for a probation violation. If there is such a warrant, the judge must order the state attorney to submit a transport order for the prisoner within 30 days. The transport order concerns the transportation of the prisoner from the holding county to the county that issued the probation warrant; the order is to be carried out by the sheriff of the county that issued the warrant.

The intent of the new procedures is to resolve unserved warrants prior to a prisoner's release, which obviates the need to transport the prisoner to the county that issued the warrant. In some cases, the state attorney may have no interest in acting on the warrant and this new process provides an opportunity for the state attorney to have the warrant dismissed. According to the Department of Corrections, the new procedures will permit the prisoners who have their warrants

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<sup>3</sup> *Chapman v. State*, 910 So. 2d 940, 942 (Fla. 5th D.C.A. 2005) (citation omitted).

<sup>4</sup> *Bonner v. State*, 866 So. 2d 163, 164-65 (Fla. 5th D.C.A. 2004).

<sup>5</sup> *Id.* at 164.

<sup>6</sup> *Gethers v. State*, 838 So. 2d 504, 508 (Fla. 2003). The Court said time would only accrue in a situation where the holding county was only holding the probationer because of the detainer.

<sup>7</sup> *Norman v. State*, 900 So. 2d 702, 703 (Fla. 2d D.C.A. 2005) (rejecting defendant's mandamus petition to compel a hearing).

<sup>8</sup> Notably, the bill provides no means of informing prisoners whether they have violated their probations.

dismissed to participate in transitional and reintegration programs, which may improve offender post-release outcomes.<sup>9</sup>

#### **Effective Date**

The bill is effective July 1, 2017.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill is not affected by the restrictions in the State Constitution which limit the Legislature's authority to impose mandates on counties and municipalities because the bill relates to criminal laws.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

There is no provision for the prisoner or his counsel to attend the status hearing. However, the bill does not close the hearing.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill may get prisoners back into the workforce more efficiently. Many transitional programs are not open to prisoners with open warrants, so resolving the warrants may help these prisoners re-integrate into society.<sup>10</sup>

##### **C. Government Sector Impact:**

The bill's fiscal impact to the state and counties is indeterminate but will likely reduce state and local costs. The bill will decrease the number of unserved warrants thereby reducing the number of instances in which a county must hold and then transport an

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<sup>9</sup> Dep't of Corrections, *Agency Analysis to HB 1091* (2017).

<sup>10</sup> *Id.*

offender who has completed a prison sentence to another county to resolve a warrant. This will likely reduce a county's prisoner transportation costs.

While the bill's provision requiring status hearings will marginally increase the workloads of state courts and state attorneys, it is anticipated that there will be fewer unserved warrants for state attorneys to address when inmates complete their sentences.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 948.33, Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.