

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 885 Arrest Warrants for State Prisoners

**SPONSOR(S):** Plakon

**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE                              | ACTION   | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|----------|---------|--|
| 1) Criminal Justice Subcommittee       | 9 Y, 0 N | Painter | Sumner                                   |
| 2) Justice Appropriations Subcommittee |          |         |  |
| 3) Judiciary Committee                 |          |         |  |

### SUMMARY ANALYSIS

When an individual is serving probation in one county, and then arrested and incarcerated in another county for a new offense, the first county will likely issue an arrest warrant for a violation of probation. Sheriffs have no duty or obligation to execute arrest warrants in outlying counties. Therefore, a county may issue a detainer to the county where the individual is incarcerated for a new offense. A detainer instructs the holding county to either:

- Hold the prisoner for the issuing county; or
- Inform the issuing county when the prisoner is about to be released

The Florida Supreme Court has ruled that a detainer generally does not result in accrual of jail or prison time served for the probation violation because a detainer is not the same as an arrest warrant. Furthermore, the Second District Court of Appeal has ruled that a trial court has no duty to conduct a hearing on a warrant for a probation violation, especially when the defendant is not imprisoned in the same county as the court. As a result, a prisoner can leave prison in one county after serving the entirety of his or her sentence for the new offense, and then be arrested for violating his or her probation in another county.

HB 885 creates a process for a state prisoner to serve out a sentence for a violation of probation or community control while in prison for another crime. If a prisoner has an unserved warrant issued by another county for a violation of probation, the bill allows the prisoner to petition for a status hearing. At that hearing, a state attorney will advise the circuit court if the prisoner does in fact have an unserved warrant for a violation of probation.

If the prisoner has an unserved warrant, the bill requires the court to enter an order to transport the prisoner to the issuing county's jail. The court must send the order to the issuing county's sheriff to transport the prisoner to the issuing county.

The Criminal Justice Impact Conference (CJIC) considered an identical version of this bill on March 29, 2017, and determined that it will have a negative indeterminate impact on the prison population.

The bill does not appear to have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Unserved Arrest Warrants

When a defendant is sentenced to probation<sup>1</sup> or community control<sup>2</sup> at the resolution of a criminal case, a standard condition of that probation is that the defendant live without violating any law.<sup>3</sup> A situation may occur where an individual is serving probation in one county and, during that time, is arrested in another county for a new offense. The individual's arrest or imprisonment in the other county may also violate his or her probation or community control.<sup>4</sup>

When an individual's arrest in one county violates his or her probation in another county, then the county in which the person is on probation will issue an arrest warrant.<sup>5</sup> The Department of Corrections estimates that, at any given time, approximately 20 state prisoners have unserved arrest warrants for violation of probation.<sup>6</sup> The term of probation does not continue running while the warrant is outstanding.<sup>7</sup> Instead, the term of probation is "tolled."<sup>8</sup>

A sheriff has a duty and obligation to execute an arrest warrant in his or her county, but the obligation does not extend to outlying counties.<sup>9</sup> Rather than execute the issued arrest warrant by serving the individual in prison for a violation of probation, a county may issue a detainer to the county where the individual is incarcerated for a new offense. A detainer instructs the holding county to either:

- Hold the prisoner for the issuing county; or
- Inform the issuing county when the prisoner is about to be released.<sup>10</sup>

The Florida Supreme Court has ruled that a detainer does not result in accrual of time served for the probation violation because a detainer is not the same as an arrest warrant.<sup>11</sup> Generally, a defendant is not entitled to jail credit for time served until the arrest warrant is served.<sup>12</sup>

A prisoner is currently unable to resolve an outstanding violation of probation in another county while serving a prison sentence on an unrelated offense because the court has no ministerial duty to conduct a hearing on an affidavit alleging a violation of probation.<sup>13</sup> A probationer is entitled to be heard on a violation of probation only after his or her arrest and return to the court which granted the probation.<sup>14</sup> Frequently, a prisoner will serve the entirety of a prison sentence, and when it is time to be released,

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<sup>1</sup> S. 948.001(8), 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."

<sup>2</sup> S. 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 specified sanctions are imposed and enforced."

<sup>3</sup> S. 948.03(1)(e), F.S.

<sup>4</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>5</sup> Pursuant to Fla. R. Crim. P. 3.121.

<sup>6</sup> Email from Department of Corrections, January 9, 2018 (on file with Criminal Justice Subcommittee staff).

<sup>7</sup> *Martinez v. State*, 965 So. 2d 1244 (Fla. 2d DCA 2007).

<sup>8</sup> *Id.* citing s. 948.06(1)(d), F.S.

<sup>9</sup> S. 30.15(1)(b), F.S.

<sup>10</sup> *Bonner v. State*, 866 So. 2d 163 (Fla. 5th DCA 2004).

<sup>11</sup> *Gethers v. State*, 838 So. 2d 504 (Fla. 2003).

<sup>12</sup> *Rios v. State*, 87 So. 3d 822 (Fla. 2d DCA 2012) (citing *Gethers v. State*, 838 So. 2d 504 (Fla. 2003)).

<sup>13</sup> *Chapman v. State*, 910 So. 2d 940 (Fla. 5th DCA 2005).

<sup>14</sup> *Id.* citing *Bonner v. State*, 866 So. 2d 163 (Fla. 5th DCA 2004).

the prisoner will be transported to the issuing county to then be served on the arrest warrant for violation of probation which will start the process of trying to resolve that case.

### **Effect of Proposed Changes**

HB 885 creates a process for a prisoner who has an unserved warrant for arrest due to a probation violation, but is incarcerated in another county on an unrelated offense. Such a prisoner may file a notice of an unserved warrant in the circuit court that issued the probation warrant, and must notify the state attorney in that county. The court will then schedule a status hearing within 90 days after receipt of notice where 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 submit a transport order for the prisoner within 30 days to bring the prisoner to the issuing county. The transport order is carried out by the sheriff of the issuing county.

The procedure will allow a prisoner to possibly resolve a violation of probation case concurrent to the prison sentence the prisoner is already serving on an unrelated offense. The prisoner would be able to petition the court for a hearing and be transported to the issuing county to be served with the outstanding arrest warrant. At that time, the prisoner would begin receiving jail credit for any time served, concurrent with the prison sentence, and therefore the violation of probation case may resolve with a concurrent sentence to the prison time the defendant is already serving. This would eliminate the need to transport prisoners to counties that issue the unserved warrants at the conclusion of that prisoner's sentence and may result in more efficient resolutions of violation of probation cases.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 948.33, F.S., relating to prosecution for violation of probation and community control arrest warrants of state prisoners.

**Section 2:** Provides an effective date of July 1, 2018.

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

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

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

None.

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

The Criminal Justice Impact Conference (CJIC) considered an identical version of this bill on March 29, 2017, and determined that it will decrease the need for prison beds by an unquantifiable amount.

The bill would prevent the need for state custody detainers upon release of inmates from prison, likely reducing the number of prison days for those offenders whose violations are currently disposed of after their prison terms end. The Department of Corrections expects the applicable inmates will more than likely serve a concurrent prison sentence if the unserved violations are handled while in custody.

The department estimates there are approximately 20 inmates with an unserved violation of probation or community control warrant at any given time. It is unknown how many inmates will initiate the notice to state attorneys in order to begin this process, or the time it will take to handle these violations.

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**