

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7091 PCB JDC 20-06 Probation Violations

SPONSOR(S): Judiciary Committee, Grant, J.

TIED BILLS: **IDEN./SIM. BILLS:** SB 7064

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	16 Y, 0 N	Hall	Luczynski

SUMMARY ANALYSIS

Probation is a form of community supervision requiring an offender to maintain specified contacts with a probation officer and complete other terms and conditions. Several standard conditions of probation apply automatically, including requirements to report to a probation officer as directed and to live without violating any law. The court may also impose special conditions, such as community service hours, regular drug or alcohol testing, no contact orders, and treatment programs. Failure to meet any condition of supervision is a violation of probation.

Generally, upon a finding that an offender violated probation, the court may revoke, modify, or continue supervision. If the court chooses to revoke, it may impose any sentence that was permissible at the offender's initial sentencing. Upon revocation of supervision, the court is bound by the sentencing guidelines under the Criminal Punishment Code. The sentencing guidelines provide a formula for computation of the lowest permissible prison sentence, based on a number of factors such as the offender's current and prior offenses. The court must make written findings, contemporaneous with sentencing for the revocation of supervision, to justify a downward departure and sentence an offender to less than the lowest permissible sentence.

In 2019, the Legislature passed legislation to address technical violations of probation more proportionally than had traditionally been authorized through court processes. A technical violation is any alleged violation of probation that is not a new felony, misdemeanor, or criminal traffic offense. Section 948.06(1)(h), F.S., requires each judicial circuit to establish an alternative sanctioning program (ASP), allowing the Department of Corrections to enforce technical violations with court approval, ensuring a swift and certain response without initiating the court process or arresting and booking the offender. Additionally, the law required a court to modify, rather than revoke, probation and imposed a 90-day jail cap for specified probationers committing a low-risk, technical violation. However, a technical drafting error in this provision may cause some confusion regarding the criteria a probationer is required to meet to qualify for mandatory probation modification and the jail cap.

PCB JDC 20-06 clarifies the criteria a probationer must meet to qualify for mandatory modification of probation and the 90-day jail cap. A court is required to modify or continue probation only when all of the following apply:

- The term of supervision is probation, rather than community control.
- The probationer does not qualify as a violent felony offender of special concern.
- The violation is a low-risk technical violation.
- The court has not previously found the probationer in violation of probation during the current term of supervision.

If modifying probation under this section for a first time, low-risk technical violation, a court may only impose a term of incarceration of up to 90 days as a special condition of probation.

The proposed bill will likely have no fiscal impact to local or state governments.

The proposed bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Probation and Community Control

At sentencing for a criminal conviction, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.¹ Probation is a form of community supervision requiring specified contacts with a probation officer and other terms and conditions.² Community control is a more intensive form of supervision involving an individualized program that restricts the offender's movement within the community, home, or residential placement.³ Several standard conditions of probation or community control apply automatically, including requirements to report to a probation officer as directed and to live without violating any law.⁴ The court may also impose special conditions, such as community service hours, regular drug or alcohol testing, no contact orders, and treatment programs.⁵ Failure to meet any condition of supervision is a violation of probation or community control (VOP).

Generally, upon a finding that an offender violated probation or community control, the court may revoke, modify, or continue supervision.⁶ If the court chooses to revoke, it may impose any sentence that was permissible at the offender's initial sentencing.⁷ Upon revocation of supervision, the court is bound by the sentencing guidelines under the Criminal Punishment Code.⁸ The sentencing guidelines provide a formula for computation of the lowest permissible prison sentence, based on a number of factors such as the offender's current and prior offenses. The court must make written findings, contemporaneous with sentencing for the revocation of supervision, to justify a downward departure and sentence an offender to less than the lowest permissible sentence.⁹

If an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.¹⁰ A VFOSC is a person who is on felony supervision:

- Related to a qualifying offense¹¹ committed on or after March 12, 2007.
- For any offense committed on or after March 12, 2007, and has previously been convicted of a qualifying offense.
- For any offense committed on or after March 12, 2007, and is found to have violated that supervision by committing a qualifying offense.

¹ S. 948.01, F.S.

² S. 948.001(8), F.S.

³ S. 948.001(3), F.S.

⁴ S. 948.03(1), F.S.

⁵ S. 948.03(2), F.S.

⁶ S. 948.06(2)(b), F.S.

⁷ *Id.*

⁸ S. 921.0022, F.S.

⁹ *State v. Roman*, 634 So. 2d 291 (Fla. 1st DCA 1994).

¹⁰ S. 948.06(8)(e)2.b., F.S.

¹¹ Section 948.06(8)(c), F.S., defines qualifying offense to include any of the following: kidnapping or attempted kidnapping, s. 787.01, F.S.; false imprisonment of a child under the age of 13, s. 787.02(3), F.S.; luring or enticing a child, s. 787.025(2)(b) or (b), F.S.; murder or attempted murder, s. 782.04, F.S.; attempted felony murder, s. 782.051, F.S.; manslaughter, s. 782.07, F.S.; aggravated battery or attempt, s. 784.045, F.S.; sexual battery or attempt, s. 794.011(2), (3), (4), or (8)(b) or (c), F.S.; lewd and lascivious battery or attempt, s. 800.04(4); lewd and lascivious molestation, s. 800.04(5)(b) or (c), F.S.; lewd and lascivious conduct, s. 800.04(6)(b), F.S.; lewd and lascivious exhibition, s. 800.04(7)(b); lewd and lascivious exhibition on computer, s. 847.0135(5)(b); robbery or attempt, s. 812.13, F.S.; carjacking or attempt, s. 812.133, F.S.; home invasion robbery or attempt, s. 812.135, F.S.; lewd and lascivious offense upon or in the presence of an elderly person or attempt, s. 825.1025, F.S.; sexual performance by a child or attempt, s. 827.071, F.S.; computer pornography, s. 847.0135(2) or (3), F.S.; transmission of child pornography, s. 847.0137, F.S.; selling or buying of minors, s. 847.0145, F.S.; poisoning food or water, s. 859.01, F.S.; abuse of a dead human body, s. 872.06, F.S.; any burglary offense that is a first or second degree felony, s. 810.02(2) or (3), F.S.; arson or attempt, s. 806.01(1), F.S.; aggravated assault, s. 784.021, F.S.; aggravated stalking, s. 784.048(3), (4), (5), or (7), F.S.; aircraft piracy, s. 860.16, F.S.; throwing a deadly missile, s. 790.161(2), (3), or (4), F.S.; and treason, s. 876.32, F.S.

- After previously being found by a court to be a habitual violent felony offender,¹² three-time violent offender,¹³ or sexual predator,¹⁴ and has committed a qualifying offense on or after March 12, 2007.¹⁵

When a person is arrested for committing a crime, he or she is generally entitled to pretrial release on reasonable conditions under the Florida Constitution.¹⁶ However, a person taken into custody for a VOP does not have a constitutional right to release pending the disposition of the VOP.¹⁷ If the offender qualifies as a VFOSC, the court is prohibited from granting pretrial release.¹⁸

Alternative Sanctioning Program

In 2019, the Legislature standardized a statewide alternative sanctioning program (ASP), allowing the Department of Corrections to enforce technical violations with court approval.¹⁹ A technical violation is any alleged VOP that is not a new felony, misdemeanor, or criminal traffic offense. The ASP ensures a swift and certain response to technical violations without initiating the court process or arresting and booking the offender. After receiving written notice of an alleged technical violation and disclosure of the evidence supporting the violation, an offender who is eligible for the ASP may either elect to participate in the program or waive participation.²⁰ If the offender waives participation, the violation proceeds through the court resolution process.²¹ A court may also disqualify a person from the ASP when initially sentencing him or her to probation.

The ASP identifies eligible offenders, eligible violations, and permissible sanctions. Eligible violations are classified as either low- or moderate-risk.

Low-risk violations only apply to probationers, not offenders on community control, and include:

- A positive drug or alcohol test result;
- Failure to report to the probation office;
- Failure to report a change in address or other required information;
- Failure to attend a required class, treatment or counseling session, or meeting;
- Failure to submit to a drug or alcohol test;
- Violation of curfew;
- Failure to meet a monthly quota for any required probation condition, including making restitution payments, paying court costs, and completing community service hours;
- Leaving the county without permission;
- Failure to report a change in employment;
- Associating with people engaged in criminal activity; or
- Any other violation as determined by administrative order of the chief judge of the circuit.²²

Moderate-risk violations include:

- Any violation classified as low-risk when committed by an offender on community control;
- Failure to remain at an approved residence by an offender on community control;
- A third low-risk violation by a probationer; or
- Any other violation as determined by administrative order of the chief judge of the circuit.²³

¹² S. 775.084(1)(b), F.S.

¹³ S. 775.084(1)(c), F.S.

¹⁴ S. 775.21, F.S.

¹⁵ S. 948.06(8)(b), F.S.

¹⁶ Art. I, s. 14, Fla. Const. Exceptions include when a person is charged with a capital offense or offense punishable by life and the proof of guilt is evident or the presumption is great, or if no conditions can reasonably protect the community from risk of physical harm.

¹⁷ *Bernhardt v. State*, 288 So. 2d 490, 497 (Fla. 1974).

¹⁸ S. 903.0351, F.S.

¹⁹ S. 948.06(9), F.S.

²⁰ S. 948.06(9)(g), F.S.

²¹ S. 948.06(9)(h)1.a., F.S.

²² S. 948.06(9)(b), F.S.

²³ S. 948.06(9)(c), F.S.

The permissible sanctions correspond to the violation risk level. For example, a probation officer may impose sanctions such as additional community service hours, counseling or treatment, drug testing, or curfew in response to a low-risk violation.²⁴ In response to a moderate-risk violation, examples of additional sanctions include residential treatment or electronic monitoring for up to 90 days or a maximum jail sentence up to 21 days.²⁵ Such responses are designed to be proportional to the severity of the technical violation and to directly respond to the nature of the technical violation.

Offenders are disqualified from alternative sanctioning under any of the following circumstances:

- The offender is a violent felony offender of special concern;
- The violation is a felony, misdemeanor, or criminal traffic offense;
- The violation is absconding;
- The violation is of a stay-away order or no-contact order;
- The violation is not identified as low- or moderate-risk by statute or administrative order;
- The offender has a prior moderate-risk level violation during the same term of supervision;
- The offender has three prior low-risk level violations during the same term of supervision;
- The term of probation is scheduled to terminate in less than 90 days; or
- The terms of the sentence prohibit alternative sanctioning.²⁶

The ASP is voluntary, and the offender may withdraw from participation at any time. Successful completion of an ASP does not affect an offender's withheld adjudication. If the offender withdraws or fails to complete a sanction within either 90 days or a timeframe determined in the agreed-upon sanction, the original VOP proceeds to the court resolution process.

Mandatory Modification of Probation and Jail Cap

Florida law also requires a court to modify, rather than revoke, probation and imposes a 90-day jail cap for specified probationers appearing before a court for committing a low-risk technical violation. Unless waived by a defendant, s. 948.06(2)(f), F.S., requires a court to modify or continue, rather than revoke, a probationary term, under specified circumstances. A technical drafting error in the legislation enacting this requirement may cause confusion as to the necessary requirements a defendant must meet to qualify for mandatory modification.

Effect of Proposed Changes

PCB JDC 20-06 corrects a technical error to clarify the required criteria a defendant must satisfy to qualify for mandatory modification of probation and the 90 day jail cap under s. 948.06(2)(f), F.S. The proposed bill clarifies that a court is required to modify or continue probation only when all of the following apply:

- The term of supervision is probation, rather than community control.
- The probationer does not qualify as a violent felony offender of special concern.
- The violation is a low-risk technical violation.
- The court has not previously found the probationer in violation of probation during the current term of supervision.

An eligible probationer who has successfully completed a sanction through the ASP is entitled to mandatory modification or continuation of probation upon his or her first referral to the court for resolution of a filed VOP affidavit.

If modifying probation under this section for a first time, low-risk technical violation, a court may only impose a term of incarceration of up to 90 days as a special condition of probation. If, however, a first time, low-risk technical violator has substantially completed his or her term of probation and has 90 days of supervision or fewer remaining on his or her sentence, a court may revoke rather than modify the probationary term. Upon revoking in this circumstance, a court may only sentence the probationer

²⁴ S. 948.06(9)(e), F.S.

²⁵ S. 948.06(9)(f), F.S.

²⁶ S. 948.06(9)(d), F.S.

to a maximum of 90 days in county jail. This provision supersedes the sentencing requirements of the Criminal Punishment Code.

The bill provides an effective date of upon becoming a law.

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 upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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 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