

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1037 Education Incentives for Probationers

**SPONSOR(S):** Justice Appropriations Subcommittee, Criminal Justice & Public Safety Subcommittee, Koster

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Hall	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Smith	Keith
3) Judiciary Committee			

### SUMMARY ANALYSIS

Probation is a form of community supervision which requires a probationer to have specified contacts with his or her probation officer and to comply with other terms and conditions. Community control is a form of intensive individualized supervision of an offender who remains in the community, but whose freedom is restricted and who is subject to close monitoring by a probation officer with a restricted caseload.

Section 948.05(2), F.S., requires the Department of Corrections (DOC) to implement a system of graduated incentives to promote compliance with the terms of supervision and prioritize the highest levels of supervision for probationers or offenders presenting the greatest risk of recidivism. As part of the graduated incentives system, a probation officer may offer, without leave of the court, incentives to a compliant probationer or offender in community control such as: a reduction in required community service hours; a waiver of supervision fees; a reduction in frequency of reporting; permission to report by mail or telephone; or transfer of an eligible offender to administration probation. A probation officer may also incentivize positive behavior and compliance by recommending to the court to modify a probationer's terms of supervision, which may include recommending: permission to travel; reduction of supervision type; modification or cessation of curfew; reduction or cessation of substance abuse testing; or early termination of supervision.

Section 944.275, F.S., authorizes DOC to grant deductions from prison sentences in the form of gain-time to encourage satisfactory behavior and to provide incentives for inmates to participate in productive activities. Specifically, s. 944.275(4)(d), F.S., authorizes DOC to award an inmate who completes a high school equivalency diploma or vocational certificate a one-time award of 60 days of incentive gain time. Probationers or offenders in community control are not currently entitled to a similar reduction of supervision term under the graduated incentives system or any other statutory authority.

CS/HB 1037 amends s. 948.05, F.S., to require DOC to implement the graduated incentives system in a manner that encourages stable employment in addition to promoting compliance with terms of supervision and prioritizing the highest level of supervision for probationers and offenders presenting the greatest risk of recidivism. Under the bill, DOC must incentivize educational achievement by awarding a 60 day reduction in the term of supervision for a probationer or offender in community control who completes an educational advancement activity, which includes obtaining a high school diploma, a high school equivalency degree, an academic degree, or a vocational certificate, during his or her term of supervision. A probationer or offender in community control who commits a subsequent violation of probation may forfeit any reduction awarded for completing an educational advancement activity, at the discretion of his or her probation officer.

The bill may have an indeterminate positive fiscal impact on DOC by requiring the supervision term of a probationer or offender in community control to be reduced for completing educational advancement activities, which may result in probationers or offenders in community control being terminated from supervision earlier.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Probation and Community Control

In Florida, if a court places a defendant on probation or into community control for a felony, the Department of Corrections (DOC) must provide immediate supervision by a certified correctional probation officer.<sup>1</sup> Probation is a form of community supervision which requires a probationer to have specified contacts with his or her probation officer and to comply with other terms and conditions.<sup>2</sup> The sentencing court determines any special terms and conditions of probation, which must be reasonably related to the circumstances of the offense and may include requirements such as completing a substance abuse treatment program or community service hours<sup>3</sup> or having no contact with a specified victim. Additionally, a probationer is required to comply with several standard conditions of probation which may include:

- Reporting to the probation officer as directed.
- Permitting the probation officer to visit the probationer at his or her home.
- Working faithfully at suitable employment, when possible.
- Residing at a specified place.
- Living without violating the law.
- Paying restitution to any aggrieved party for the damage or loss cause by a probationer's offense.
- Being prohibited from possessing, carrying, or owning a firearm or weapon, without the probation officer's consent.
- Being prohibited from using intoxicants to excess or possessing any drugs or narcotics.<sup>4</sup>

Community control is a form of intensive individualized supervision of an offender who remains in the community, but whose freedom is restricted within the home, community, or noninstitutional residential placement and includes specific sanctions and monitoring by probation officers with restricted caseloads.<sup>5</sup> In addition to the standard conditions which apply to normal probationers, an offender on community control must: be confined to an agreed-upon residence during any hours he or she is away from work or public service activities; complete mandatory community services; and be supervised by electronic monitoring.<sup>6</sup>

##### *Education and Learning as a Condition of Probation or Community Control*

Section 948.037, F.S., authorizes a court to require an offender who has not obtained a high school diploma or a high school equivalency diploma or who lacks basic or functional literacy skills, to make a good faith effort toward attaining literacy skills or a high school equivalency diploma as a condition of probation or community control.<sup>7</sup> A court may not revoke probation or community control because of an offender's inability to achieve literacy skills or a diploma, but may revoke probation or community control if the offender fails to make a good faith effort towards achieving such skills or diploma.<sup>8</sup> A court

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<sup>1</sup> S. 948.01, F.S. A "correctional probation officer" is a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controlees within DOC institution or within the community. Additionally a correctional probation officer must meet the minimum qualifications for employment or appointment as established in s. 943.13, F.S. See s. 943.10, F.S.

<sup>2</sup> S. 948.001(8), F.S.

<sup>3</sup> S. 948.031, F.S.

<sup>4</sup> S. 948.03, F.S.

<sup>5</sup> S. 948.001(3), F.S.

<sup>6</sup> S. 948.101, F.S.

<sup>7</sup> S. 948.037, F.S.

<sup>8</sup> *Id.* "Good faith effort" means the offender is enrolled in a program of instruction and is attending and making satisfactory progress toward completion of the requirements.

may grant a probationer or offender in community control early termination of supervision upon his or her successful completion of an approved program.

### Reduction or Termination of Term of Probation or Community Control

Generally, once a probationer completes the period of probation, he or she is released from probation and the court no longer retains jurisdiction to sentence the offender for the offense for which probation was allowed. However, if a probationer has performed satisfactorily, has not been found in violation of any terms or conditions of supervision, and has met all financial conditions imposed by the court, including fines, court costs, and restitution, his or her probation officer may recommend early termination of probation to the court at any time before the scheduled termination date.<sup>9</sup>

#### *Early Termination or Conversion to Administrative Probation*

Under s. 948.06(4), F.S., upon the probationer's motion,<sup>10</sup> the court shall order early termination of supervision or convert the supervisory term to administrative probation<sup>11</sup> if all of the following conditions are met:

- The probationer has completed at least half of the term of probation to which he or she was sentenced.
- The probationer has successfully completed all other conditions of probation.
- The court has not found the probationer in violation of probation pursuant to a filed violation of probation affidavit at any point during the current supervisory term.
- The parties did not specifically exclude the possibility of early termination or conversion to administrative probation as part of a negotiated sentence.
- The probationer does not qualify as a violent felony offender of special concern under s. 948.06(8)(b), F.S.<sup>12</sup>

However, a court may decline to early terminate the probationary term or convert the term to administrative probation if it makes written findings that continued reporting probation is necessary to protect the community or the interest of justice.<sup>13</sup> Additionally, an offender on community control is not eligible to motion for mandatory early termination or conversion to administrative probation under s. 948.04, F.S.<sup>14</sup>

#### *Graduated Incentives*

Section 948.05(2), F.S., requires DOC to implement a system of graduated incentives to promote compliance with the terms of supervision and prioritize the highest levels of supervision for probationers or offenders presenting the greatest risk of recidivism. As part of the graduated incentives system, the department may offer, without leave of the court, the following incentives to a compliant probationer or offender in community control:

- Up to 25 percent reduction of required community service hours;
- Waiver of supervision fees;
- Reduction in frequency of reporting;
- Permission to report by mail or telephone; or
- Transfer of an eligible offender to administration probation as authorized under s. 948.013, F.S.<sup>15</sup>

The department may also incentivize positive behavior and compliance by recommending to the court to modify a probationer's terms of supervision, which may include recommending:

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<sup>9</sup> S. 948.04, F.S.

<sup>10</sup> This provision only applies to a defendant sentenced on or after October 1, 2019. See s. 948.04(4), F.S.

<sup>11</sup> "Administrative probation" is a form of no contact, nonreporting supervision. A court may order administrative probation, or DOC may transfer an offender to administrative probation under specified circumstances. S. 948.001(1), F.S.

<sup>12</sup> S. 948.04(4), F.S.

<sup>13</sup> S. 948.04(5), F.S.

<sup>14</sup> S. 948.04(6), F.S.

<sup>15</sup> S. 948.05(2)(a), F.S.

- Permission to travel;
- Reduction of supervision type;
- Modification or cessation of curfew;
- Reduction or cessation of substance abuse testing; or
- Early termination of supervision.<sup>16</sup>

A probationer or offender in community control may forfeit any previously earned probation incentive if he or she commits a subsequent violation of probation.<sup>17</sup> Graduated incentives are currently offered at the discretion of the probation officer or court and a probationer or offender in community control is not entitled to any such graduated incentive.

#### Educational Attainment Gain Time Award for Inmates

Section 944.275, F.S., authorizes DOC to grant deductions from prison sentences in the form of gain-time to encourage satisfactory behavior and to provide incentives for inmates to participate in productive activities. Specifically, s. 944.275(4)(d), F.S., authorizes DOC to award an inmate who completes a high school equivalency diploma or vocational certificate a one-time award of 60 days of incentive gain time.<sup>18</sup>

Probationers or offenders in community control are not entitled to a similar reduction of supervision term under the graduated incentives system or any other statutory authority.

#### **Effect of Proposed Changes**

CS/HB 1037 amends s. 948.05, F.S., to require DOC to implement the graduated incentives system for probationers and offenders in community control in a manner that encourages stable employment in addition to promoting compliance with terms of supervision and prioritizing the highest level of supervision for probationers and offenders presenting the greatest risk of recidivism. Under the bill, the department must incentivize educational achievement by awarding a 60 day reduction in the term of supervision for a probationer or offender in community control who completes an educational advancement activity during his or her term of supervision.

Under the bill, “educational advancement activity” means obtaining a high school diploma, a high school equivalency diploma, an academic degree, or a vocational certificate.

The bill requires a probationer or offender in community control to be given a 60-day reduction in supervision for each educational advancement activity he or she completes and the award of such a reduction does not require court approval.

A probationer or offender in community control who commits a subsequent violation of probation may forfeit any supervision term reduction awarded for completing an educational advancement activity, at the discretion of his or her probation officer.

The bill provides an effective date of July 1, 2022.

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

**Section 1:** Amends s. 948.05, F.S.; relating to court to admonish or commend probationer or offender in community control; graduated incentives.

**Section 2:** Provides an effective date of July 1, 2022.

<sup>16</sup> S. 948.05(2)(b), F.S.

<sup>17</sup> S. 948.05(2)(c), F.S.

<sup>18</sup> S. 944.275(4)(d), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on DOC by requiring the supervision term of a probationer or offender in community control to be reduced for completing educational advancement activities, which may result in probationers or offenders of community control being under department supervision for shorter terms.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

The bill may have an indeterminate positive fiscal impact on probationers or offenders in community control who have their term of supervision reduced for completing educational advancement activities, thereby reducing the amount of supervision and other related fees owed to DOC.

### 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:

The Department of Corrections has sufficient rule making authority to implement the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 3, 2022, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill in that it:

- Removed a requirement for DOC and county probation authorities to promulgate remote reporting policies and consider a probationer's scheduling conflicts when scheduling meetings.
- Removed revisions to the standard conditions of probation applicable to all probationers.
- Removed requirements for DOC to grant probation credits for good behavior and positive activities.
- Removed authorization for DOC to grant probation credits for meritorious actions.
- Removed data collection and reporting requirements applicable to probation credits and the number of probationers terminated from supervision early.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.