

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.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 752 (barcode)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Gainer and others

SUBJECT: Probationary or Supervision Services for Misdemeanor Offenders

DATE: February 17, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 752 removes a statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. Under current law, a private or a public entity may only provide probation services to offenders sentenced by a county court.

Currently, the Department of Corrections (DOC) must supervise felony and misdemeanor offenders who are sentenced to or placed on probation or other supervision by a circuit court. The bill authorizes the DOC to supervise misdemeanor offenders when such supervision is ordered by the circuit court, but retains the requirement that the DOC supervise felony offenders.

The bill transfers the authority to approve a contract with a private entity to provide supervision services for misdemeanor offenders from the county court judge or administrative judge to the chief judge of the circuit.

The bill authorizes probationers or offenders in community control to fulfill the reporting requirements of their terms and conditions of probation by reporting to their probation office *remotely* if approved by the relevant probation officer, county probation authority or entity, or the DOC and if the court has not excluded remote reporting in his or her order of probation. The bill requires the probation officer to schedule meetings required as a condition of probation at

times and locations that accommodate work schedules, family caregiving obligations, and medical care of the probationer, unless it poses a threat to public safety.

The bill requires the 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. The 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, such as 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 will have an indeterminate fiscal impact on the DOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Court Jurisdiction

Florida has a two-tiered trial court system that consists of circuit courts and county courts. The state Constitution requires a circuit court to be established in each judicial circuit established by the Legislature, of which there are twenty.¹

Circuit courts have exclusive original jurisdiction over:

- All actions at law not cognizable by the county courts;
- Proceedings related to settling estates of decedents and minors, granting testamentary letters, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to probate courts;
- All cases in equity including cases related to juveniles, except traffic offenses as provided in chs. 316 and 985, F.S.;
- All felonies and all misdemeanors arising out of the same circumstances as a felony which is also charged;
- All cases involving the legality of any tax assessment or toll or denial of refund, except as provided in s. 72.011, F.S.;
- Ejectment actions; and
- All actions involving the title and boundaries of real property.²

¹ Art. V, ss. 1 and 5, FLA. CONST. A list of judicial circuits can be found at <https://www.flcourts.org/Florida-Courts/Trial-Courts-Circuit> (last visited February 17, 2022).

² Section 26.012(2), F.S.

The state Constitution also establishes a county court in each county.³ County courts have original jurisdiction over:

- Misdemeanor cases not cognizable by the circuit courts;
- Violations of municipal and county ordinances; and
- Actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed \$30,000, exclusive of interest, costs, and attorney fees.⁴

Generally, felony offenses are adjudicated by the circuit court and misdemeanor offenses are adjudicated by the county court. However, circuit courts routinely adjudicate misdemeanor charges when:

- A misdemeanor charge arises out of the same circumstances as a felony; or
- A felony charge is reduced or dismissed in circuit court and the court retains jurisdiction over the remaining misdemeanor charge.

Probation and Community Control

Probation is a form of community supervision requiring specified contacts with probation officers and compliance with certain terms and conditions.⁵ The court determines the terms and conditions of probation.⁶ Section 948.03, F.S., provides standard conditions of probation; however, a court may sentence an offender to special terms and conditions at the time of sentencing, such as substance abuse treatment. 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 caused 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.⁷

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.⁸ In addition to the standard conditions which apply

³ Art. V, s. 6, FLA. CONST.

⁴ Section 34.01(1), F.S. The jurisdictional limit for civil actions was \$15,000 prior to January 1, 2020, at which time the jurisdictional limit was raised to \$30,000. The jurisdictional limit is scheduled to rise to \$50,000 on January 1, 2023. The law provides a process by which the jurisdictional limit is to be reviewed and adjusted every 10 years beginning July 1, 2030; however it may not be lower than \$50,000.

⁵ Section 948.01(8), F.S.

⁶ Section 948.03, F.S.

⁷ Section 948.03, F.S.

⁸ Section 948.001(3), F.S.

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.⁹

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.¹⁰ 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.¹¹ A court 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.¹²

Early Termination or Conversion to Administrative Probation

Under s. 948.06(4), F.S., upon the probationer's motion,¹³ the court shall order early termination of supervision or convert the supervisory term to administrative probation¹⁴ 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.¹⁵

⁹ Section 948.101, F.S.

¹⁰ Section 948.037, F.S.

¹¹ *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.

¹² Section 948.04, F.S.

¹³ This provision only applies to a defendant sentenced on or after October 1, 2019. See s. 948.04(4), F.S.

¹⁴ "Administrative probation" is a form of no contact, nonreporting supervision. A court may order administrative probation, or the DOC may transfer an offender to administrative probation under specified circumstances. Section 948.001(1), F.S.

¹⁵ Section 948.04(4), F.S.

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.¹⁶ 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.¹⁷

Graduated Incentives

Section 948.05(2), F.S., requires the 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.¹⁸

The DOC 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.¹⁹

A probationer or offender in community control may forfeit any previously earned probation incentive if he or she commits a subsequent violation of probation.²⁰ 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 the 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 the 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.²¹

¹⁶ Section 948.04(5), F.S.

¹⁷ Section 948.04(6), F.S.

¹⁸ Section 948.05(2)(a), F.S.

¹⁹ Section 948.05(2)(b), F.S.

²⁰ Section 948.05(2)(c), F.S.

²¹ Section 944.275(4)(d), F.S.

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.

Sentence of Probation

County Court Probation

A defendant who is placed on probation after being found guilty of a misdemeanor may not be sentenced to a term of supervision exceeding six months, unless otherwise ordered by the court.²² Any person sentenced to misdemeanor probation by the county court must pay at least \$40 per month, as determined by the court, to the court approved public or private entity providing misdemeanor supervision.²³

A private entity or public entity, including licensed substance abuse education and intervention programs, may provide probation services to offenders sentenced by a county court, when such services are provided under the supervision of the board of county commissioners or the court.²⁴ For example, the Salvation Army provides supervision services including drug testing, job assistance, community service placement, and substance abuse assistance and rehabilitation to misdemeanor probationers in multiple Florida counties.²⁵ Professional Probation Services and its affiliated company, Judicial Correction Services, provide services in a number of Florida counties.²⁶

Any private entity providing supervision services for misdemeanor probationers must contract with the county in which the services will be provided.²⁷ In a county with a population of less than 70,000, the county court judge, or in a county with more than one county court judge, the administrative judge of the county court must approve the contract. The terms of the contract must include, but are not limited to:

- The extent of the services to be rendered by the entity providing supervision and rehabilitation.
- Staff qualifications and criminal record checks of staff.
- Staffing levels.
- The number of face-to-face contacts with probationers.
- Procedures for handling the collection of probationer fees and restitution.
- Procedures for handling indigent probationers that ensure placement irrespective of ability to pay.
- Circumstances under which revocation of a probationer's supervision may be recommended.
- Reporting and record keeping requirements.
- Default and contract termination procedures.

²² Section 948.15(1), F.S.

²³ Section 948.09(1)(b), F.S.

²⁴ Section 948.15(2), F.S.

²⁵ Such misdemeanor probation services are provided in Citrus, Dixie, Duval, Gilchrist, Highlands, and Marion counties. The Salvation Army, *Correctional Services*, available at <https://salvationarmyflorida.org/correctional-services/> (last visited February 17, 2022).

²⁶ See Professional Probation Services, *Our Companies*, available at <https://ppsfamily.com/our-companies/> (last visited February 17, 2022).

²⁷ Section 948.15(3), F.S.

- Procedures that aid probationers with job assistance.
- Procedures for accessing criminal history records of probationers.²⁸

On a quarterly basis, the entity must report to the chief judge a summary of the number of probationers supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of probationers for whom supervision will be terminated. The entity must permit its records to be inspected upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any agent thereof.²⁹

A private entity that charges a fee for providing supervision services to probationers must register with the board of county commissioners in the county in which the entity offers services. The entity must provide specified information for each program it operates, including:

- The length of time the program has been operating in the county;
- A list of the staff and a summary of their qualifications;
- A summary of the types of services that are offered under the program; and
- The fees the entity charges for court-ordered services and any procedures for indigent probationers.³⁰

A private entity, including a licensed substance abuse education and intervention program, providing misdemeanor supervision services must comply with all other applicable provisions of law.³¹

Circuit Court Probation

If the circuit court places a defendant on probation for a felony, the DOC must supervise the defendant.³² A defendant who is placed on probation for a misdemeanor may not be placed under the DOC's supervision unless the circuit court was the court of original jurisdiction.³³ The DOC currently supervises more than 164,000 offenders on probation or in community control throughout Florida.³⁴

Any person placed on probation under ch. 948, F.S., must pay the DOC supervision fees equal to the total month or portion of a month of supervision times the court-ordered amount, but such amount cannot exceed the actual per diem cost of supervision.³⁵ The DOC must consider an offender's ability to pay in establishing a written pay plan. Any funds collected from felony

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 948.15(4), F.S.

³¹ Section 948.15(5), F.S.

³² Section 948.01(1)(a), F.S.

³³ Section 948.01(2), F.S.

³⁴ Florida Department of Corrections, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited February 17, 2022).

³⁵ Section 948.09(1)(a)1., F.S.

probationers may be used by the DOC to offset the costs associated with community supervision programs.³⁶

Subsections 948.01(1) and (5), F.S., prohibit a private entity from providing probationary or supervision services to felony or misdemeanor offenders sentenced to probation or other supervision by the circuit court. As such, a private entity is authorized to provide supervision services to a misdemeanor offender sentenced by the county court, but cannot provide such services to a misdemeanor offender sentenced by the circuit court.

Remote Reporting in Community Supervision

Smartphones are widely used by the U.S. population. Smartphones are essentially handheld computers that also provide cellular service. They typically integrate a touchscreen interface, internet access, camera, video recorder, GPS navigation, and an operating system capable of running downloaded applications.³⁷ According to a survey conducted by Pew Research, 85 percent of U.S. adults say they own a smartphone.³⁸

Over the past several years, a number of smartphone applications for community supervision have entered the market.³⁹ These applications are essentially case management and monitoring programs designed to run on such a device.⁴⁰

In general, remote monitoring offers advantages and disadvantages. The advantages of remote monitoring include:

- Remote reporting and supervision, which allows the client to remotely submit reports to his or her officer with information related to employment status, living arrangements, contact information, and other important data.
- Calendar event management, which allows reminders to be set for important events, such as court dates, scheduled drug tests, or a reminder to take a prescribed drug at a specified time.
- Positive reinforcement, which allows recognition for positive behaviors, such as meeting curfews, negative drug tests, and timely meeting other obligations. These recognitions may be immediate or automated for delivery at certain times or upon demonstration of certain behaviors.
- Access to resources, which allows clients to access existing resources in real-time or some applications may offer direct support by integrating the delivery of certain services.

³⁶ *Id.* Additionally, a felony probationer must pay a \$2-per-month surcharge to be used by the DOC to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and similar equipment. Section 948.09(1)(a)2., F.S.

³⁷ George Drake and Joe Russo, *The Smart Phone as a Community Corrections Tool*, J. OF OFFENDER MONITORING, (Spring/Summer 2016), pp. 5-8, available at <https://www.civresearchinstitute.com/online/PDF/JOM-2901-01-Drake-Smartphone.pdf> (last visited February 17, 2022).

³⁸ Pew Research Center, *Mobile Fact Sheet*. (Apr. 7, 2021), available at <https://www.pewresearch.org/internet/fact-sheet/mobile/> (last visited February 17, 2022).

³⁹ American Probation and Parole Association, *Issue Paper: Leveraging the Power of Smartphone Applications to Enhance Community Supervision*, (Apr. 7, 2020), available at <https://www.appa-net.org/eweb/docs/APPA/stances/ip-LPSAECs.pdf> (last visited February 17, 2022).

⁴⁰ *Id.*

- Location monitoring and continuous tracking, which allows an officer to determine the location of the device and the client.⁴¹

There are also number of disadvantages to remote monitoring. The most prominent disadvantage is the ability of the client to separate from his or her device. However, some developers have developed tethering systems, which notify the officer when the client is not within a certain distance of his or her device.⁴² There is also the issue of cellular phone coverage if the person is located in or travels to an area with poor service.⁴³ Another issue involves privacy concerns, as the applications may collect biometric data, personal health information, behavioral data, and may impact the client's right to privacy.⁴⁴

The cost of remote reporting may vary depending on the approach used. There are essentially two different approaches to using smartphones for community supervision. The first approach involves a vendor-provided smartphone that comes installed with software, and the second involves installing the software application on the client's phone.⁴⁵ Vendor-provided phones are more expensive; however, they offer greater security and are capable of monitoring all phone activity and restricting access to certain functionalities depending on risk level or compliance with the conditions of supervision. Installing software on client-provided phones is less costly; however, the phones are less secure. For example, a client may remove a SIM card or a battery or put the phone in airplane mode.⁴⁶

III. Effect of Proposed Changes:

The bill repeals the statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. The bill authorizes a private entity to provide probationary or supervision services to any misdemeanor offender who is placed on probation, regardless of whether such sentence is imposed by a county or circuit court. The bill authorizes the DOC to supervise misdemeanor offenders when such supervision is ordered by the circuit court, but retains the requirement that the DOC supervise felony offenders.

The bill transfers the authority to approve a contract with a private entity to provide supervision services for misdemeanor offenders from the county court judge or administrative judge to the chief judge of the circuit.

The bill authorizes probationers or offenders in community control to fulfill the reporting requirements of their terms and conditions of probation by reporting to their probation office remotely if approved by the relevant probation officer, county probation authority or entity, or the DOC and if the court has not excluded remote reporting in his or her order of probation. The

⁴¹ *Id.*, and *supra*, note 37.

⁴² *Supra*, note 39.

⁴³ *Id.*

⁴⁴ *Id.* See also Todd Feathers, "They Track Every Move": How US Parole Apps Created Digital Prisoners, THE GUARDIAN, (Mar. 4, 2021), available at <https://www.theguardian.com/global-development/2021/mar/04/they-track-every-move-how-us-parole-apps-created-digital-prisoners> (last visited February 17, 2022).

⁴⁵ *Supra*, note 39.

⁴⁶ *Id.*

bill requires a probation officer to schedule meetings required as a condition of probation at times and locations that accommodate work schedules, family caregiving obligations, and medical care of the probationer, unless it poses a threat to public safety. The DOC and county probation entities must adopt probation reporting policies that allow for remote reporting and take the above-referenced scheduling conflicts into consideration.

This bill requires the 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 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 during his or her term of supervision.

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. The bill defines “educational advancement activity” as obtaining a high school diploma, a high school equivalency diploma, an academic degree, or a vocational certificate.

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 is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill may have an indeterminate impact on county governments that contract with private entities to provide misdemeanor probationary services. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. **Other Constitutional Issues:**

None identified.

V. Fiscal Impact Statement:

A. **Tax/Fee Issues:**

None.

B. **Private Sector Impact:**

Private entities who contract to provide probationary services to misdemeanor offenders may experience an increase in workload. If these private entities implement a remote reporting program, it will incur costs related to such program.

Individuals on community supervision may be required to expend costs relating to obtaining a smartphone and maintaining service on the device.

C. **Government Sector Impact:**

The bill may have an indeterminate fiscal impact on those counties that contract with private entities to provide probation and supervision services of misdemeanor offenders, due to a possible increase in probationers.

The bill will have an indeterminate fiscal impact on the DOC, as some probationers may be diverted away from the DOC's supervision.⁴⁷ The DOC may realize a cost savings when probation terms are reduced by 60 days for each educational activity a probationer or offender in community control completes. If the DOC implements a remote reporting program, it will incur costs related to such program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 948.01, 948.03, 948.05, 948.09, and 948.15.

⁴⁷ Department of Corrections, *2022 Agency Legislative Analysis of SB 752*, pg. 3, (Dec. 10, 2021) (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 16, 2022:

The committee substitute:

- Allows probationers or offenders in community control to fulfill the reporting requirements of their terms and conditions of probation by reporting to their probation office *remotely* if approved by the relevant probation officer, county probation authority or entity, or the DOC and if the court has not excluded remote reporting in his or her order of probation;
- Requires the DOC to 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; and
- Makes conforming changes.

CS by Criminal Justice on January 25, 2022:

The committee substitute:

- Authorizes the DOC to supervise misdemeanor offenders when ordered to do so by the circuit court;
- Requires the chief judge of the circuit to approve a contract with a private entity to provide supervision services for misdemeanor offenders, rather than the county court judge or administrative judge; and
- Makes conforming changes.

- B. **Amendments:**

None.