

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 7091	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Probation and Community Control	115	Y's 0	N's
SPONSOR(S):	Criminal Justice Subcommittee; Altman	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	CS/CS/SB 790			

SUMMARY ANALYSIS

HB 7091 passed the House on April 26, 2017, and subsequently passed the Senate on May 3, 2017.

The bill revises ch. 948, F.S., which relates to probation and community control, by deleting obsolete provisions, conforming terminology so that it used consistently, and amending provisions to reflect the Department of Corrections' current practices relating to probation and community control.

The bill also amends s. 948.06, F.S., to address the recent decision in *Mobley v. State*, 197 So.3d 572 (4th DCA 2016), in which the Court held that, under current statute, an offender's probationary term was not tolled when the trial court issued an arrest warrant for technical violations of probation. Under the bill, the requirement for an arrest warrant to be issued for the commission of a new crime is removed, and, as a result, any warrant for a violation of probation, including a technical violation, will result in the offender's probationary term being tolled.

The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill would decrease the prison population by an indeterminate amount.

The bill was approved by the Governor on June 14, 2017, ch. 2017-115, L.O.F., and will become effective on July 1, 2017., except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Probation and Community Control – Updating Definitions and Terminology

Chapter 948, F.S., relating to probation and community control, sets forth definitions for the chapter in s. 948.001, F.S. Probation is defined as a form of community supervision that requires specified contacts with a parole and probation officer in addition to completion of other imposed terms and conditions.¹ The least restrictive form of probation is administrative probation, which is a form of noncontact supervision in which an offender who presents a low risk of harm to the community may, upon successful completion of at least half the term of probation, be transferred to nonreporting status until the expiration of the probation term.² Community control is the most intense form of probation, in which the offender is subject to supervised custody in the community, including surveillance on weekends and holidays, by a probation officer with a restricted caseload.³

Section 948.001, F.S., provides a definition for a “community residential drug punishment center” as a residential drug punishment center designated by the Department of Corrections (“FDC”).⁴ However, the centers are no longer in existence as the Legislature repealed s. 948.034, F.S., which related to community residential drug punishment centers, in 2010.⁵

Effect of Bill

The bill amends s. 948.001, F.S., to update the definitions for “administrative probation” and “probation” and repeal the definition for “community residential drug punishment center.” The definition for “administrative probation” is amended to specify that it is a form of no contact, nonreporting supervision and that the authority for this type of reduced level of supervision is provided for in s. 948.013, F.S. The definition of “probation” is amended to remove the reference to parole officers as FDC now employs probation officers for all forms of supervision.⁶

The bill also amends ss. 948.03 and 948.101, F.S., relating to the terms and conditions of probation and community control, respectively, to remove references to parole officers and correctional probation officers as FDC uniformly uses the term “probation officer”. Additionally, the bill repeals references to “probation program drug punishment center” or “community residential facility” because these centers and facilities no longer exist.

Uniform Order of Supervision

In relevant part, s. 948.01, F.S., authorizes a court to place a defendant on probation or into community control. Pursuant to this statute, FDC is required to consult with the Office of the State Courts Administrator to *develop* and *disseminate* uniform order of supervision⁷ forms to the courts by July 1 of each year. The law requires the courts to use the forms provided by FDC whenever a person is placed on community supervision.

Effect of Bill

The bill amends s. 948.01, F.S., to acknowledge that the uniform order of supervision was developed and has been implemented since 2009. The bill provides that the FDC must instead *revise* the form, as necessary, and *make it available* to courts thereafter.

¹ s. 948.001(9), F.S.

² s. 948.001(1), F.S.

³ s. 948.001(3), F.S.

⁴ s. 948.001(4), F.S.

⁵ ch. 2010-113, L.O.F.

⁶ Department of Corrections, Agency Bill Analysis for PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

⁷ An order of supervision refers to an individual order of probation, community control, parole, conditional release, or other document from a sentencing, releasing or pretrial authority, providing for specific terms and conditions of a community supervision program.

FLORIDA DEPARTMENT OF CORRECTIONS, *Community Supervision Definitions*,

<http://www.dc.state.fl.us/facilities/comcorinfo/definitions.html> (last visited March 16, 2017).

Split Sentences

Section 948.012, F.S., authorizes a sentencing court to sentence a defendant for any felony or misdemeanor, except for a capital felony, to a split sentence. A split sentence occurs when a defendant is sentenced to a specified term of incarceration, in either the county jail or state prison, which is followed by a period of community supervision upon his or her release.⁸ The period of probation or community control must begin immediately following a defendant's release from incarceration, except in circumstances where the defendant is subject to an involuntary civil commitment proceeding pursuant to ch. 394, F.S.⁹

Effect of the Bill

The bill creates an additional exception to the requirement for a defendant's period of probation or community control to begin immediately following release from incarceration for those required to complete addiction-recovery supervision.¹⁰ An offender who received a split sentence of probation following his or her release from incarceration must first serve out the term of addiction-recovery supervision before the term of probation or community control may begin. The bill creates the additional exception to acknowledge that such an offender is not permitted to begin his or her term of probation or community control immediately following release from incarceration.

Administrative Probation

Section 948.013, F.S., prohibits certain types of offenders from eligibility for administrative probation. Currently, persons convicted of offenses committed on or after July 1, 1998, are ineligible for administrative probation if they are sentenced to or serving a term of probation for committing, attempting, conspiring, or soliciting to commit, any one of the following felony offenses:

- Section 787.01, F.S. (Kidnapping) or s. 787.02, F.S. (False imprisonment), where the victim is a minor and the defendant is not the victim's parent;
- Section 787.025, F.S. (Luring or enticing a child);
- Section 787.06(3)(g), F.S. (Human trafficking);
- Chapter 794, F.S. (Sexual battery);
- Former s. 796.03, F.S. (Procuring person under age of 18 for prostitution);
- Section 800.04, F.S. (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
- Section 825.1025(2)(b), F.S. (Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
- Section 827.071, F.S. (Sexual performance by a child);
- Section 847.0133, F.S. (Protection of minors, prohibition of certain acts in connection with obscenity);
- Section 847.0135, F.S. (Computer pornography, traveling to meet a minor); or
- Section 847.0145, F.S. (Selling or buying of minors).

Effect of Bill

The bill amends s. 948.013, F.S., to specify that the current provisions of ineligibility for administrative probation for certain offenders apply to persons whose crimes were committed after July 1, 1998, but before October 1, 2017. Additionally, the bill adds a new provision to make offenders, whose offense

⁸ *Id.*

⁹ This type of proceeding relates to the civil commitment of a sexually violent predator following his or her release from incarceration which causes them to be transferred to the custody of the Department of Children and Families ("DCF"). The period of probation following release from incarceration for one of these offenders is tolled while he or she remains in the custody of the DCF. ch. 394, F.S.

¹⁰ Any offender released from prison who is convicted of a crime committed on or after July 1, 2001, must be given addiction-recovery supervision if the offender has: 1) a history of substance abuse or addiction; 2) participated in any drug treatment; 3) no current or previous convictions for a violent offense; 4) no current or previous convictions for drug trafficking or for the unlawful sale of a controlled substance; 5) no current or previous convictions for a property offense, with certain exceptions; and 6) no current or previous conviction for a traffic offense involving injury or death. s. 944.4731, F.S.

was committed on or after October 1, 2017, ineligible for placement on administrative probation if the person is sentenced to or serving a term of probation for committing, attempting, conspiring, or soliciting to commit, any of the following felony offenses:

- Any offense described in s. 775.21(4)(a)1.a. or (4)(a)1.b.;¹¹ or
- Any offense described in s. 943.0435(1)(h)1.a.¹²

The cross-referenced sections of law result in any offender who is convicted of an offense on or after October 1, 2017, which qualifies for designation as a “sexual predator” or “sexual offender,” being ineligible for administrative probation. This eliminates the need for the enumerated offenses currently listed in the statute to be continually updated; instead, the offenses will be updated when the cross-referenced sections of law relating to the classification of sexual predators or sexual offenders are updated.

This section of the bill takes effect on October 1, 2017.

Community Service

Public service, as it relates to probation and community control, is work an offender performs without pay for the benefit of the community. The work may only be performed for designated tax-supported or tax-exempt entities that enter into an agreement with FDC to employ offenders as a condition of supervision. Section 948.031, F.S., requires FDC to establish a public works program for a county upon request of the chief judge of the circuit. FDC does not operate an established public service work program in every county in the state.¹³

Effect of Bill

The bill amends s. 948.031, F.S., to authorize FDC to require certain offenders to complete *community service*. The amendment reflects the fact that FDC does not currently have a public service work program in all counties in Florida and emphasizes that such a requirement should be performed for the benefit of the community.

Residential Treatment as a Condition of Probation or Community Control

As a condition of probation or community control, an offender may be sentenced to complete a residential treatment program. Section 948.035, F.S., restricts the court from ordering residential treatment unless supervised by one of the following types of facilities:

- A FDC probation and restitution center;¹⁴
- A probation program drug punishment treatment center;¹⁵
- A community residential facility which is owned and operated by any public or private entity, excluding a community correctional center as defined in s. 944.026, F.S.;¹⁶ or
- A county-owned facility.

Prior to an offender’s admission into a treatment center, the court is required to obtain an individual assessment and recommendation pursuant to the Community Control Implementation Manual which must be considered by the court when ordering such a placement.¹⁷

¹¹ The Florida Sexual Predator Act lists the offenses for which an offender is designated as a “sexual predator” and is subject to registration and community public notification provisions under the Act. s. 775.21(4), F.S.

¹² This section lists the offenses for which a person is designated a “sexual offender” and is subject to registration and reporting requirements. s. 943.0435, F.S.

¹³ Department of Corrections, Agency Bill Analysis for PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

¹⁴ Probation and restitution centers (“PRC”) are medium intensity residential programs for selected offenders on probation and community control who require more supervision. The PRC stresses employment and restitution to the victim, community service work, GED and basic life skills, group and individual counseling, and other opportunities for self-improvement. All offenders in the PRC receive a substance abuse evaluation and, if treatment is needed, are treated at the PRC facility. FLORIDA DEPARTMENT OF CORRECTIONS, *Executive Summary: Probation and Restitution Centers*, <http://www.dc.state.fl.us/pub/subabuse/probation/99-00/execsum3.html>.

¹⁵ Section 948.034, F.S., regarding residential drug punishment centers was repealed in 2010. ch. 2010-113, L.O.F.

¹⁶ Community-based residential drug treatment facilities include both secure and nonsecure facilities. s. 944.026(b), F.S.

Effect of Bill

The bill amends s. 948.035, F.S., to reflect the current process for evaluating and referring offenders to residential treatment programs. The bill repeals references to a probation program drug punishment treatment center, which no longer exists. Further, the bill removes the requirement for an individualized assessment to be performed in accordance with the Community Control Implementation Manual, as this manual is obsolete.¹⁸ Instead, the bill amends the requirements to reflect the current practice of having a qualified practitioner provide an assessment and recommendation on the appropriate treatment needs of an offender.

Education and Learning as a Condition of Probation

Section 948.037, F.S., requires a court to order an offender who has not obtained a high school diploma or a high school equivalency diploma to make a good faith effort towards obtaining the same as a condition of probation or community control. The law prohibits the court from revoking an offender's probation or community control because he or she is unable to achieve such skills or diploma, but may revoke supervision if the offender fails to make a good faith effort¹⁹ to do so.

Effect of Bill

The bill amends s. 948.037, F.S., to make a court's decision to order an offender to complete education or learning as a condition of supervision discretionary, rather than mandatory.

Violation of Probation and Community Control

Upon a violation of probation, it is typically the probation officer's responsibility to file an affidavit²⁰ alleging the acts which constitute a violation of probation. A violation of probation may occur for a new crime committed while the offender is on probation, or for a technical violation,²¹ such as failure to pay costs of supervision or a positive urinalysis test. In some circuits, the chief judge may direct FDC to use a notification letter for technical violations, instead of using a violation report, affidavit, or warrant.²²

When probation is properly tolled upon the filing of an affidavit alleging a violation of probation, the court maintains jurisdiction over the offender for the violation that is alleged and for any new violation which may occur during the tolling period. The probation officer is permitted to continue to supervise the probationer until the court revokes or terminates the probation.²³

Section 948.06(1)(f), F.S., provides the current alternatives by which an offender's probationary period may be tolled upon a violation of probation. In addition to the filing of an affidavit alleging a violation of probation, one of the following must also occur:

- Issuance of a warrant pursuant to s. 901.02, F.S.;
- A warrantless arrest of the offender; or
- Issuance of a notice to appear.

¹⁷ s. 948.035(3), F.S.

¹⁸ ch. 2008-250, L.O.F.

¹⁹ "Good faith effort" is defined to mean "the offender is enrolled in a program of instruction and is attending and making satisfactory progress toward completion of requirements." s. 948.037(1), F.S.

²⁰ An affidavit "refers to a sworn written statement of fact that details the conditions of supervision violated and the manner in which the conditions were violated." FLORIDA DEPARTMENT OF CORRECTIONS, *Community Supervision Definitions*, www.dc.state.fl.us/facilities/comcorinfo/definitions.html (last visited March 16, 2017).

²¹ "Technical violation" generally means any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. *See* s. 948.06(h)1., F.S.

²² If this is applicable, the chief judge must provide written direction as to the types of technical violations which are to be reported by notification letter of a technical violation, any exceptions to those violations, and the required process for submissions. s. 948.06(g), F.S.

²³ s. 948.06(1)(f), F.S.

Section 901.02, F.S., relating to the issuance of arrest warrants, authorizes a judge to issue an arrest warrant for *any crime committed* within the judge's jurisdiction, when he or she is satisfied that probable cause exists.²⁴

Recently, a Fourth District Court of Appeal case exposed a potential defect in s. 948.06(1)(f), F.S. In *Mobley v. State*, the defendant was charged with technical violations of probation for failing to make restitution payments and a drug testing fee payment. On the same day the affidavit of violation of probation was filed, the trial court issued warrants to arrest the defendant for the technical violations. After the date the defendant's probation was originally set to expire, the court sentenced him to more than 25 years in prison.²⁵

Mobley appealed arguing that the warrant for his arrest was not issued pursuant to s. 901.02, F.S., because it did not allege he committed a crime. Thus, he alleged that his probationary period had not been tolled and had expired before the sentencing hearing, which meant that the court lacked jurisdiction to sentence him for the violation.

The Fourth District Court of Appeal agreed, holding that s. 948.06(1)(f), F.S., clearly required a warrant to be issued under s. 901.02, F.S., for the probationary period to be tolled. In turn, s. 901.02, F.S., required that the warrant be issued for *a crime*. As the warrants in the case were issued for technical violations, not crimes, they were not issued under s. 901.02, F.S., and the defendant's probation was never tolled.²⁶ At least one other conviction for a violation of probation has been reversed and the sentence vacated based on the same analysis the court used in *Mobley*.²⁷ Recently, the Florida Supreme Court declined a certified question by the Fourth District Court of Appeal following the *Mobley* decision.²⁸

Effect of the Bill

The bill amends s. 948.06, F.S., to remove the requirement that a warrant for a violation of probation be issued under s. 901.02, F.S. Rather, the bill authorizes a warrant to be issued for any violation; thus, making *any* warrant for a violation of probation sufficient to toll an offender's probationary term. Additionally, the bill amends s. 948.06, F.S., to provide an additional option for technical violations in lieu of a violation report, affidavit, and warrant, by allowing a probation officer to issue a notice to appear. Further, the bill removes references to parole officers throughout s. 948.06, F.S., to conform the language to the rest of ch. 948, using the term "probation officer."

Payment for Cost of Supervision

Supervision fees are used by FDC to offset the costs associated with community supervision programs. Section 948.09, F.S. requires a person placed under any of the following forms of supervision to pay a monthly fee:

- Probation;
- Drug offender probation;
- Community control;
- Parole;
- Addiction-recovery supervision;
- Conditional release supervision; or
- Pretrial intervention program.

The law requires FDC to consider the offender's ability to pay and to incorporate that ability into a payment plan, if necessary. An offender's failure to pay supervision fees may result in the revocation of probation by the court, the revocation of parole or conditional release by the Florida Commission on

²⁴ s. 901.02(1), F.S. (*emphasis added*).

²⁵ *Mobley v. State*, 197 So. 3d 572, 573 (Fla. 4th DCA 2016).

²⁶ *Id.* at 574.

²⁷ *See Lewin v. State*, 192 So. 3d 91 (Fla. 4th DCA 2016).

²⁸ *State v. Mobley*, SC 16-936, 2016 Fla. LEXIS 1174 (Fla. 2016).

Offender Review, the revocation of control release by the Control Release authority, or removal from a pretrial intervention program by the state attorney.²⁹

Section 948.09, F.S., authorizes FDC to exempt a person from payment of any or all of his or her supervision fees if one of the following circumstances applies:

- The offender has diligently attempted, but is unable to *obtain* employment which provides him or her sufficient income to make payments;
- The offender is a student and certification of such student status is supplied by the school to *the Secretary of Corrections*;
- The offender has an employment handicap, as determined by an examination *acceptable to, or ordered by, the Secretary of Corrections*;
- The offender's age prevents him or her from obtaining employment;
- The offender is responsible for dependents and the payment of supervision fees constitutes an undue hardship on the offender;
- The offender's supervision has been transferred outside the state; or
- *There are other extenuating circumstances, as determined by the Secretary of Corrections.*

Section 948.09(4), F.S., authorizes FDC to contract with public or private entities to provide probation services for misdemeanor offenders. The law requires the provider to compile a monthly report, made available to DOC, relating to supervision of misdemeanor offenders.

Effect of Bill

The bill amends s. 948.09, F.S., to remove language specifying the different types of probation or community control requiring an offender to pay a supervision fee. Rather, the bill specifies that anyone placed on supervision or in a pretrial intervention program must pay a monthly supervision fee. The bill repeals reference to parole as a form of supervision that may be revoked for failure to pay supervision fees.

Additionally, the bill amends the factors for which FDC may exempt a person from payment of supervision fees in the following ways:

- Adds the offender's inability to *maintain* employment, despite diligent attempt, which provides him or her with sufficient income to make such payments;
- Changes the person to whom certification of student status must be supplied to the *offender's probation officer*;
- Removes the requirement that the examination determining employment handicap be *acceptable to, or approved by, the Secretary of Corrections*; and
- Removes *other extenuating circumstances, as determined by the Secretary of Corrections.*

Further, the bill repeals s. 948.09(4), F.S., related to misdemeanor probation providers, as FDC reports this section is outdated and obsolete.³⁰

Community Control Programs

Community control is the most rigid form of supervision and is generally used as an alternative for offenders that otherwise would have been incarcerated in jail or prison. Section 948.10, F.S., provides that community control should be used to address the following offenders:

- Those who violate probation with technical violations or *misdemeanor* violations;
- Those who violate parole with technical violations or *misdemeanor* violations; or
- Those found guilty of felonies, who, because of their criminal background or the seriousness of the offense, would not be placed on regular probation.

²⁹ s. 948.09, F.S.

³⁰ Department of Corrections, Agency Bill Analysis PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

The law requires the caseloads of community control officers to be no more than 25 cases per officer and requires FDC to commit at least 10 percent of its probation field staff to the operation of the community control program.³¹ Section 948.10(5), F.S., currently requires FDC to make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, including a detailed analysis of the community control program.

Effect of Bill

The bill amends s. 948.10, F.S., to add the term “home confinement” to the section directory, specifying that community control is such a program. Additionally, the bill repeals the reference to *misdemeanor* violations in the targeted groups of offenders for community control. As such, the bill authorizes courts and the Florida Commission on Offender Review to use community control for offenders who violate their probation or parole with *any* new violation of law, not just misdemeanor offenses.

The bill also repeals the requirement for FDC to allocate at least ten percent of its probation field staff to the community control program and increases the maximum caseload of an officer to 30 cases.

Finally, the bill repeals s. 948.10(5), F.S., that refers to a requirement for FDC to make an annual report to certain government officials, because the law requiring this report was repealed by the Legislature in 2008.³²

Electronic Monitoring

Currently, s. 948.11, F.S., *authorizes* FDC to electronically monitor an offender who is sentenced to community control when the court has imposed electronic monitoring as a condition of supervision.

Effect of Bill

The bill amends s. 948.11, F.S., to *require* FDC to electronically monitor an offender on community control when the court has imposed such as a condition of supervision. Additionally, the bill makes technical changes to s. 948.11, F.S., to use the uniform terminology of “supervision” and “probation officer” as used throughout ch. 948, F.S.

Misdemeanor Probation Services

Section 948.15, F.S., allows a private entity to contract with a county to provide misdemeanor probation services. The law requires such a contract to include certain provisions, such as the requirement to report staff qualifications and criminal record checks of staff in accordance with essential standards established by the American Correctional Association as of January 1, 1991.³³

Effect of Bill

The bill removes the requirement for private probation providers to provide staff qualifications and criminal record checks in accordance with the specified 1991 standards as the standards are now obsolete.³⁴

Miscellaneous Effects of Bill

The bill repeals s. 948.50, F.S. providing the short title “Community Corrections Partnership Act.”

The bill reenacts the following provisions to incorporate the amendments by the bill:

- Section 921.187, F.S., relating to disposition and sentencing, is reenacted to incorporate the amendment made to s. 948.013, F.S.
- Section 947.1405, F.S., relating to the conditional release program, is reenacted for the purpose of incorporating the amendment made to s. 948.09, F.S.

³¹ s. 948.10(2), F.S.

³² ch. 2008-250, L.O.F.

³³ s. 948.15(3), F.S.

³⁴ Department of Corrections, Agency Bill Analysis PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

- Sections 947.1747 and 948.01, F.S., relating to community control as a special condition of parole and when a court may place a defendant on probation or into community control, respectively, are reenacted to incorporate the amendment made to s. 948.10, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill would decrease the prison population by an indeterminate amount. According to the CJIC, “[w]hile amending s. 948.013, F.S. should not affect current populations, future decision making by judges could be impacted by the discretion in the use of adult education programs and the expansion of further community control for technical violators. Per FDC, in FY 15-16, there were 19,082 technical violators, and 6,321 were sentenced to prison. It is not known how many currently sent to prison would be affected by changes in this law.”³⁵

The Department of Corrections does not anticipate a fiscal impact. Any potential impact on courts is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

³⁵ Department of Economic and Demographic Research, HB 7091 – Probation and Community Control, “Criminal Justice Impact Conference”, March 29, 2017, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB939.pdf>.