

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 381 Probationary or Supervision Services for Misdemeanor Offenders

SPONSOR(S): Judiciary Committee, Criminal Justice & Public Safety Subcommittee, Maney

TIED BILLS: **IDEN./SIM. BILLS:** SB 1006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N, As CS	Mathews	Hall
2) Judiciary Committee	17 Y, 0 N, As CS	Mathews	Kramer

SUMMARY ANALYSIS

Florida operates under a two-tier trial court system made up of circuit courts and county courts. A criminal offense is categorized as either a felony or a misdemeanor. Circuit courts have jurisdiction to hear all felonies and any misdemeanor arising out of the same circumstances as a felony which is also charged. County courts have jurisdiction to hear misdemeanor cases not cognizable by the circuit court. Under some circumstances, a circuit court may sentence a person for a misdemeanor offense only. This may occur when a charge that began as a felony is reduced or dismissed and the circuit court retains jurisdiction to sentence the offender for the remaining misdemeanor.

Probation is a period of supervision which requires a probationer to complete several standard conditions including reporting to a probation officer as directed and living without violating the law. A court may also sentence an offender to special conditions of probation, which may include requirements such as completing community service hours or therapeutic treatment programs.

Section 948.15, F.S., authorizes a private entity or public entity to provide probation services to offenders sentenced by the county court, when such services are provided under the supervision of the board of county commissioners or the court. If the circuit court places a defendant on probation for a felony, the Department of Corrections (DOC) must supervise the defendant. Further, s. 948.01, F.S., prohibits 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.

CS/CS/HB 381 amends ss. 948.01 and 948.15, F.S., to remove the prohibition on a private entity providing probationary or supervision services to misdemeanor offenders sentenced by the circuit court. The bill authorizes a private entity to provide probationary or supervision services to all misdemeanor offenders, regardless of whether the offender was sentenced by the county court or the circuit court. The bill authorizes DOC to supervise misdemeanor offenders when such supervision is order by the sentencing court, and retains the current requirement for DOC to supervise felony probationers sentenced by the circuit court.

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 the administrative judge of the county court to the chief judge of the circuit.

The bill may have an indeterminate impact on DOC and the private sector. The bill authorizes a private entity to provide probation services to misdemeanor offenders sentenced by the circuit court, but does not require a private entity, instead of DOC, to supervise such offenders. As such, the actual number of probationers who will be diverted away from DOC supervision is unknown.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Court Jurisdiction

Florida's judicial branch is divided into two main types of courts, circuit courts and county courts. A circuit court is a trial court that has exclusive original jurisdiction over:

- All actions at law not cognizable by the county courts;
- Proceedings relating 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 all cases relating to juveniles except traffic offenses as provided in chapters 316 and 985;
- 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.¹

County courts are trial courts that have original jurisdiction over all:

- Misdemeanor cases not cognizable by the circuit courts;
- Violations of municipal and county ordinances;
- 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's fees.²

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 Other Supervision

Probation is a period of supervision which requires a probationer to complete several standard conditions including reporting to a probation officer as directed and living without violating the law.³ A court may also sentence an offender to special conditions of probation, which may include requirements to complete community service hours or complete therapeutic treatment programs.

County Court

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.⁴ Any person sentenced to misdemeanor probation by the county court must pay no less than \$40 per month,

¹ S. 26.012(2), F.S.

² S. 34.01(1), F.S. Under this section, the jurisdiction of the county court in civil actions depends on the amount in controversy and the date upon which such action is filed.

³ S. 948.03, F.S.

⁴ S. 948.15(1), F.S.

as determined by the court, to the court approved public or private entity providing misdemeanor supervision.⁵

Section 948.15, F.S., authorizes a licensed substance abuse education and intervention program to provide misdemeanor probation services to a defendant found guilty of a misdemeanor for possession of a controlled substance or drug paraphernalia. Additionally, a private entity or public entity, including such 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.⁶ 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.⁷

Any private entity providing supervision services for misdemeanor probationers must contract with the county in which the services will be provided.⁸ 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 offenders 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.
- Procedures that aid probationers with job assistance.
- Procedures for accessing criminal history records of probationers.⁹

The entity must report to the chief judge on a quarterly basis summarizing 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 open its records to inspection upon request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any agent thereof.

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.
- The fees the entity charges for court-ordered services and any procedures for indigent probationers.¹⁰

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.¹¹

Circuit Court

⁵ S. 948.09(1)(b), F.S.

⁶ S. 948.15(2), F.S.

⁷ Such misdemeanor probation services are provided in Citrus, Columbia, Dixie, Duval, Gilchrist, Highlands, and Marion counties. The Salvation Army, *Correctional Services*, (2019), <https://salvationarmyflorida.org/correctional-services/> (last visited Mar. 13, 2021).

⁸ S. 948.15(3), F.S.

⁹ *Id.*

¹⁰ S. 948.15(4), F.S.

¹¹ S. 948.15(5), F.S.

If the circuit court places a defendant on probation for a felony, the Department of Corrections (DOC) must supervise the defendant.¹² A defendant who is placed on probation for a misdemeanor may not be placed under DOC's supervision unless the circuit court was the court of original jurisdiction.¹³ As of June 30, 2020, there were 153,581 offenders on probation or other supervision under DOC.¹⁴

Any person placed on probation under ch. 948, F.S., must pay 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 the supervision.¹⁵ DOC must consider an offender's ability to pay in establishing a written pay plan. Any funds collected from felony probationers may be used by DOC to offset the costs associated with community supervision programs.¹⁶

Section 948.01(1) and (5), F.S., prohibits 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.

Effect of Proposed Changes

CS/CS/HB 381 amends ss. 948.01 and 948.15, F.S., to remove the prohibition on a private entity providing probationary or supervision services to misdemeanor offenders sentenced by the circuit court. As such, the bill authorizes a private entity to provide probationary or supervision services to all misdemeanor offenders, regardless of whether the offender was sentenced by the county court or the circuit court.

The bill gives any court the ability to order a misdemeanor offender to be supervised by a private entity, but does not require a court to order such supervision. Under the bill, the sentencing court may order DOC to supervise misdemeanor offenders when appropriate. A felony probationer sentenced by the circuit court must continue to be supervised by DOC.

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

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 948.01, F.S., relating to when court may place defendant on probation or into community control.

Section 2: Amends s. 948.15, F.S., relating to misdemeanor probation services.

Section 3: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹² S. 948.01(1)(a), F.S.

¹³ S. 948.01(2), F.S.

¹⁴ Florida Department of Corrections, *2020-2021 Strategic Plan and Annual Report: Community Corrections Population (2020)*, <http://www.dc.state.fl.us/pub/annual/1819/2020-2021-Strategic-Plan.pdf> (last visited Mar. 13, 2021).

¹⁵ S. 948.09(1)(a)1., F.S.

¹⁶ *Id.* Additionally, a felony probationer must pay a \$2-per-month surcharge to be used by DOC to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and similar equipment. S. 948.09(1)(a)2., F.S.

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate impact on DOC. Over the past three fiscal years, DOC has received an average of 4,227 probation admissions where the supervision type is listed as misdemeanor. The bill authorizes, but does not require, a private entity to provide probation services to misdemeanor offenders sentenced by the circuit court. As such, the actual number of probationers who will be diverted away from DOC supervision is unknown.

The bill may have an indeterminate impact on the private sector. The bill authorizes, but does not require a private entity to provide probation services to a misdemeanor offender sentenced by the circuit court. Therefore, the bill may result in an increased number of probationers being supervised by a private entity, but the number of probationers that may actually be diverted is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2021, the Criminal Justice & Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized a private entity to provide probationary services under s. 948.15, F.S., to a misdemeanor offender who is sentenced by the circuit court; and
- Made a technical change to the bill.

On March 17, 2021, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized DOC to provide supervision services to misdemeanor offenders when such supervision is ordered by the sentencing court.
- Transferred the authority to approve a contract for private probationary services for misdemeanor offenders from the county court judge or administrative judge of the county court to the chief judge of the circuit.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.