

STORAGE NAME: h3733.cp

DATE: March 12, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3733

RELATING TO: Probationers/Community Controllees

SPONSOR(S): Representative Byrd

COMPANION BILL(S): SB 1214 (Identical)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME AND PUNISHMENT

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill adds the following conditions to the standard conditions of probation and community control that need not be pronounced by the trial court in order to be enforced:

1. For controlled substance or firearm offenses, the probationer must submit to warrantless, random searches of his or her person, property, and residence as requested by the supervising probation officer. For any offense a probationer must submit to a search if requested.
2. For offenses involving victims, the probationer may not have contact with the victim unless the court specifically authorizes and explains why contact should be allowed.

The bill establishes criteria required by the Florida Supreme Court to keep evidence seized from a person on probation or other supervision from being excluded from a trial because there was not a warrant to conduct the search of a home or probable cause to search the person. A supervising officer must still have had reason to believe that a person possessed the contraband in order for the evidence seized to be admitted into evidence at trial.

The bill prohibits evidence from being excluded or suppressed from **trial** if certain conditions are met.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Conditions of Supervision

Section 948.03, F.S., lists the standard and discretionary conditions of probation and community control. Standard conditions do not need to be pronounced at sentencing because the conditions are provided for by the statute. Standard conditions of probation and community control include: reporting to a supervising officer, paying restitution and court costs, submitting to random drug or alcohol testing as directed, refraining from carrying a firearm and refraining from consuming drugs or alcohol to excess.

Arrest for Violation of Supervision

Section 948.06 F.S., provides that a law enforcement officer or probation supervisor may make an arrest without a warrant if there are reasonable grounds to believe that a person on community control or probation violated a material condition of supervision.

Admissibility of Evidence for Person on Supervision

Generally, law enforcement must have a warrant demonstrating probable cause and signed by a judge in order to search a home. A search of property, such as an automobile or clothing is usually permitted if there is "probable cause" and the search is done "incident to arrest." Evidence that is seized in violation of these general principles is usually suppressed. However, the prohibition against unreasonable search and seizures in the Fourth Amendment of the federal constitution offers a lesser degree of protection for people sentenced to supervision for committing a crime than it does for ordinary citizens. The Florida Constitution requires that Florida's prohibition against unreasonable searches and seizures be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court.

The United States Supreme Court in Griffin v. Wisconsin, 483 U.S. 868 (1987), held that the warrantless search of a probationer's home was "reasonable" within the meaning of the Fourth Amendment of the federal constitution because it was conducted pursuant to a valid Wisconsin law governing probationers:

A warrant requirement would interfere to an appreciable degree with the probation officer's role as a magistrate rather than the probation officer as the judge of how close a supervision the probationer requires. Moreover, the delay inherent in obtaining a warrant would make it more difficult for probation officials to respond quickly to evidence of misconduct... and would reduce the deterrent effect that the possibility of expeditious searches would otherwise create...By way of analogy, one might contemplate how parental custodial authority would be impaired by requiring judicial approval for search of a minor child's room.

Griffin at 483 U.S. 868, 876. In Griffin, the "reasonable grounds" for the search was an unsubstantiated tip by a police officer that contraband was in the defendant's home. The United States Supreme Court held that the "tip" was sufficient reason for the search, even though the "tip" would ordinarily not be sufficient grounds to obtain a warrant to

search a home. Thus the trial court's decision not to suppress the contraband was affirmed.

The Wisconsin state law regulating probationers in Griffin provided, in part, that any probation officer may search a probationer's home without a warrant as long as his supervisor approves and as long as there are "reasonable grounds" to believe there is contraband in the home. Another provision of Wisconsin law makes it a violation of the terms of probation to refuse to consent to a home search.

Florida Supreme Court Ruling

In Soca v. State, 673 So.2d 24 (Fla. 1996), the Florida Supreme Court reversed the trial court for not suppressing evidence of a controlled substance. In Soca a probation supervisor decided to conduct a search of a probationer's home because an investigator provided a tip that a probationer was dealing cocaine, and the same probationer had tested positive for cocaine. The Florida Supreme Court held that the cocaine discovered by the warrantless search could not be used as evidence in a new trial, but it could be used to prove a violation of the probation that the offender was subject to when the drugs were found. The Florida Supreme Court reasoned that the United States Supreme Court's decision in Griffin did not apply because, "Florida's statutes contain no scheme expressly authorizing or regulating the authority of probation officers... to conduct a probationary search when it is supported by "reasonable grounds."

The absence of the following two provisions in Florida Statutes permitted the Florida Supreme Court to hold that Florida's probationary scheme is not sufficient to allow evidence of a warrantless search of a probationer's home to be submitted to a jury:

1. Florida does not have a law that explicitly permits a probation officer to search a probationer's home without a warrant as long as there were reasonable grounds to believe contraband or items the probationer was not allowed to possess were present.
2. Florida does not have a law that makes it a violation of probation to refuse to consent to a home search.

B. EFFECT OF PROPOSED CHANGES:

The bill adds the following conditions to the standard conditions of probation and community control that need not be pronounced by the trial court in order to be enforced:

1. For controlled substance or firearm offenses, the probationer must submit to warrantless, random searches of his or her person, property, and residence as requested by the supervising probation officer. For any offense a probationer must submit to a search if requested.
2. For offenses involving victims, the probationer may not have contact with the victim unless the court specifically authorizes and explains why contact should be allowed.

The bill allows any law enforcement officer or any probation, community control, or probation supervisor to search the person on supervision without a warrant, if there are reasonable grounds to believe there is a violation of supervision. If a law enforcement officer conducts the search, the officer must be aware that the person is subject to probation or community control.

The bill prohibits evidence from being excluded or suppressed from **trial** if the following conditions are met:

1. The defendant has previously been convicted of a felony,
2. The defendant was on probation or community control at the time of the offense,
3. The defendant was subject to random searches, and
4. There was reasonable suspicion to believe the defendant was in violation of the law or in violation of the terms of his or her supervision.

The bill also prohibits evidence from being excluded from a **violation of probation or community control hearing** if there was reasonable suspicion to believe that the offender was in violation of the law or the terms of his or her supervision. A strike-everything amendment is anticipated that prohibits evidence from being excluded during a hearing for a violation of supervision because it violates the state or federal constitutions. A majority of federal courts agree that the exclusionary rule should not apply to hearings for violations of supervision.

The bill also prohibits evidence from being excluded because there is no reasonable suspicion for the search, if the person searched was subject to random searches as a condition of supervision for a previous offense involving firearms or controlled substances.

Anticipated Strike-Everything Amendment

It is anticipated that a strike-everything amendment will be filed that will ensure that persons on parole and control release will be subject to searches by a supervising officer, and that the officer will have authority to conduct a search if there is reasonable grounds to believe the person either violated a condition of supervision or was in possession of an item that the person was prohibited to possess.

The strike-everything amendment would also allow evidence that is seized without reasonable grounds to be considered at a hearing for a violation of supervision. Currently, the Florida Supreme Court would exclude this evidence from the hearing, but the majority of federal courts do not exclude evidence from hearings for violation of supervision. If the Florida Supreme Court overrules this portion of the bill there is a chance the court could be reversed by the United States Supreme Court.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 947.23, 948.001, 948.01, 948.03, 948.06, 958.03, 958.14

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

To the extent that more convictions will result as more probationers are charged with new crimes for evidence seized from newly authorized searches, there will be some additional cost involved. The Criminal Justice Estimating Conference has not met to estimate the impact of the bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the bill concerns a criminal statute, Article VII, Section 18 does not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The United States Supreme Court in Griffin v. Wisconsin, upheld a probationary scheme that provided the following items:

1. The scheme explicitly permitted a probation officer to search a probationer's home without a warrant as long as there were reasonable grounds to believe contraband or items the probationer was not allowed to possess were present.
2. The approved scheme made it a violation of probation to refuse to consent to a home search.
3. The approved scheme provided factors to be considered to determine whether the supervising officer had "reasonable grounds" to search a person on probation.

The Florida Supreme Court in Soca determined that evidence had to be suppressed because Florida did not have a probationary scheme like the one in Wisconsin that included the above factors. The bill provides for the first two criteria above, but not the third. The third criteria could be provided by agency rule. In fact, the entire probationary scheme in Wisconsin that was approved by the United States Supreme Court was created by rule in Wisconsin. The anticipated strike-everything amendment defines reasonable grounds to mean that the courts are to apply the reasonable suspicion standard which is clearly and exhaustively defined in case law. Reasonable suspicion is the broadest and most

permissive standard the courts are likely to accept for admitting evidence in a new trial against a person on supervision.

The vast majority of federal appellate courts have held that exclusionary rule does not apply in a hearing for a violation of probation regardless of whether the search was reasonable. United States v. Bazzano, 712 F.2d 826 (3rd Cir. 1982). The Florida Supreme Court currently requires that the search of a probationer or his or home be "reasonable." State v. Grubbs 373 So.2d 905,908 (Fla. 1979). However, the reasonableness standard has been interpreted very broadly when it comes to exclusion of evidence in a violation of probation hearing. State v. Cross, 487 So.2d 1056 (Fla. 1986)(See Overton's concurring opinion). The Florida Supreme Court may decide that the exclusionary rule applies to hearings for violation of supervision despite the provisions of this bill, however, such a decision may be appealed to the United States Supreme Court.

The strike-everything amendment allows evidence to be used against a person on supervision in the broadest possible manner that the courts are likely to uphold as constitutional. The courts are generally willing to limit the benefits of the Fourth Amendment of the United States Constitution for people on supervision because the conditions of supervision are not nearly as restrictive as prison. Grubbs at 909.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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