

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1132

SPONSOR: Criminal Justice Committee and Senator Laurent

SUBJECT: Violations of probation or community control

DATE: March 15, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This CS provides for the period of an offender’s probation or community control to be tolled upon the filing of an affidavit and the issuance of a warrant violating supervision and reinstatement of the previously imposed period of supervision if the affidavit is dismissed by the court. It would become effective on July 1, 2000.

This CS substantially amends the following section of the Florida Statutes: 948.06, F.S.

II. Present Situation:

Section 948.04(2), F.S., states: “Upon the termination of the period of probation, the probationer shall be released from probation and is not liable to sentence for the offense for which probation was allowed.” There has been significant litigation in Florida courts centering around the question of what circumstances may stop the period of probation from running, particularly when an offender is in violation status.

Practically speaking, the answer to this question is important because a court lacks jurisdiction over the offender once the supervision period has ended unless the “processes of the court have been set in motion” for revocation or modification of the supervision. *State ex rel. Ard v. Shelby*, 97 So.2d 631 (Fla. 1st DCA 1957); *Carroll v. Cochran*, 140 So.2d 300 (Fla. 1962).

The timing of the beginning of the revocation or modification process is important in cases where the affidavit alleging the violation of supervision is received by the court in close proximity to the time when the period of supervision would naturally terminate under s. 948.04(2), F.S.

In *Boyd v. State*, 717 So.2d 524 (Fla. 1998), the Supreme Court held that an arrest warrant is not considered issued for the purposes of setting the revocation or modification process in motion until the judge has signed the warrant and the warrant has been delivered to the proper executive officer to be executed. In this violation of community control case, the state had argued

unsuccessfully that s. 901.02, F.S., established that a judge's signature on a warrant was all that was needed for the warrant to issue, therefore it was at that point in time when the revocation or modification process was set in motion. In 1999 the Legislature enacted ch. 99-169, L.O.F., which added language to s. 901.02(1), F.S., to clarify that a warrant is issued at the time it is signed by the magistrate. This law became effective July 1, 1999.

The current state of Florida law is that when an offender under community supervision absconds from supervision, the time period of the probationary or community control sentence is tolled upon the commencement of the revocation or modification process. Absconding includes situations where an offender has changed his/her residence without permission or is out of state in prison, and therefore not under probationary supervision. *Ware v. State*, 474 So.2d 332 (Fla. 1st DCA, 1985); *Weeks v. State*, 496 So.2d 942 (Fla. 2nd DCA 1986). An offender who has merely failed to follow the terms of his/her supervision is not considered by the courts to be an absconder, therefore the period of their supervision is not tolled while they are in violation status. *Francois v. State*, 695 So.2d 695 (Fla. 1997).

III. Effect of Proposed Changes:

The CS amends Subsection (1) of s. 948.06, F.S., which provides that when there are reasonable grounds to believe a probationer or offender in community control has violated the terms of supervision, that person may be arrested without a warrant and brought before the court. The statute also provides that a court may issue a warrant for the arrest of the person under supervision based on facts made known to the court by an affidavit presented to the court by someone, presumably the probation officer, having knowledge of the facts which would show the violation.

The CS amends the statute to provide that once an affidavit alleging a violation has been filed, and a warrant issued by the court, the period of the probation is tolled until the violation is ruled upon by the court.

The CS further provides that if the violation is dismissed, the period of probation or community control shall continue, notwithstanding the time period it was tolled.

The CS would effectively prevent the period of the probation or community control from terminating during the pendency of a timely-commenced violation, regardless of the reason for the violation being filed.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
