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DATE: April 18, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: HB 569
RELATING TO: Violation of Probation or Community Control
SPONSOR(S): Representatives Garcia and Rubio
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0
(2) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
(3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 15 NAYS 0
(4)
(5)

I. SUMMARY:

HB 569 provides that if an affidavit is filed alleging a violation of probation or community control and a warrant is issued pursuant to 901.02(1), F.S., the probationary or community control period will be tolled until a revocation hearing is held and the court decides to revoke, modify, or continue the probation or community control. The bill provides that if the court dismisses the affidavit of the alleged probation violation, then the probation or community control supervision will continue as previously imposed, "notwithstanding any period the probation or community control was tolled."

HB 569 provides an effective date of July 1, 2001.

The Committee on Crime Prevention, Corrections & Safety adopted one amendment, which is traveling with the bill, on March 20, 2001. The amendment clarified that an offender on probation or community control remains under the jurisdiction of the court during all periods of tolled probation or community control.

The Committee on Judicial Oversight adopted one amendment. The amendment permits the court to impose a sentence where the combined amount of time under supervision and time tolled exceeds the maximum provided in s. 775.082, F.S., for a term up to the amount of time tolled. The amendment is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Criminal defendants not sentenced to incarceration are placed on probation or community control and must meet certain conditions within the period of probation or community control. The probationary period is a fixed period of time during which conditions of probation must be met. Once the fixed period of probation expires, the court loses jurisdiction over the probationer. See State v. Boyd, 717 So. 2d 524, 526 (Fla. 1998) ("This Court has held that a trial court lacks jurisdiction to revoke probation after the probationary period for a violation that occurs during the probationary period unless the revocation process is set in motion during the probationary period."). Section 948.04, F.S., provides that defendants who are found guilty of felonies and are placed on probation shall not be under such supervision for more than 2 years, unless the sentencing court specifies otherwise. For felony offenses, the maximum period of probationary supervision cannot, when combined with the period of incarceration imposed, exceed the maximum period of imprisonment under §§ 775.082 or 775.084, F.S.¹ Section 948.15, F.S., provides that defendants who are found guilty of misdemeanors and are placed on probation shall not be under such supervision for more than 6 months, unless the sentencing court specifies otherwise. If the misdemeanor is alcohol related, the offender cannot receive a probationary sentence of more than one year.²

Under current statute and case law, periods of probation or community supervision cannot be tolled upon the filing of an affidavit and subsequent issuance of a warrant, minus one exception.³ That exception occurs when an offender has absconded from his supervision of probation or community control. In such a situation, when an affidavit is filed alleging the offender has absconded and therefore violated his or her probation or community control, and a warrant is subsequently issued for the offender's arrest, the period of probation or community control is tolled (suspended) until the offender is apprehended. The probation or community control is tolled because the offender who has absconded is no longer under the "controlling arm of the state."⁴

Other than the exception mentioned above, the period of supervision for probation or community control cannot be tolled. Whenever a probationer allegedly violates his or her conditions of

¹ Fuentes v. State, 711 So.2d 175 (Fla 2nd DCA 1998)

² § 948.15, F.S.

³ Francois v. State, 695 So.2d 695 (Fla. 1997) and State v. Savage, 589 So.2d 1016 (Fla. 5th DCA 1991)

⁴ Francois v. State, 695 So.2d 695 (Fla. 1997)

probation, the probation officer files an affidavit of violation of probation (PVA) and the process for the probation violation hearing is set in motion when the court signs a warrant for the probationer's arrest. However, the commencement of the violation process (by the filing of the PVA and signing of the arrest warrant) does not stop the probationary period. Instead, the period of probation continues to run until the court holds a probation violation hearing and either revokes the probation, modifies the probation, or permits the probationary period to continue. Due to the tremendous number of probation cases, the probation violation hearing is often not held until several weeks or months after the PVA and the arrest warrant have been filed.

In misdemeanor or felony cases where the probationary period ordered by the court is relatively short, the situation can arise where the time remaining for the probationary period is extremely short (if it has not already expired) by the time of the probation violation hearing. In such cases, the court's only effective remedy is to revoke the probation and place the probationer in jail or prison or simply terminate the offender from supervision "unsuccessfully." However, in many cases, where the alleged violation of probation consists of failure to attend a treatment program, rather than the commission of a new crime, the prosecution is not seeking incarceration, but rather compliance with the condition of probation. In such cases, by the time the violation hearing is held, there is often not enough time remaining on supervision for the offender to complete the court-ordered treatment program. Examples of such treatment programs include batterers' intervention programs in domestic violence cases, drug programs in narcotics cases, or DUI programs in DUI cases.

C. EFFECT OF PROPOSED CHANGES:

HB 569 provides that if an affidavit is filed alleging a violation of probation or community control, and a warrant is subsequently issued, the probationary or community control period will be tolled until the probationary or community control period is either revoked, modified, or continued by the court. Supporters of the bill suggest the tolling provision will afford the courts an opportunity to assure compliance with conditions of probation by affording probationers an opportunity to complete the imposed probation conditions before the probationary period expires.

The legislation also provides a clause that serves to protect probationers in cases where the alleged violation is not proven after the probation violation hearing. If, upon hearing the charges against the offender, the court decides to dismiss the affidavit alleging the violation of probation or community control, then the offender's probation or community control will resume as previously imposed, and the time during which the probation or community control was tolled will be counted toward the inmate's sentence. In other words, it will be as if the tolling never occurred and the probationer will not be penalized.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. "Effect of Proposed Changes"

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

While HB 569 attempts to close a probation "loophole," it raises one question. Does tolling a probationer's supervisory period remove the probationer from the jurisdiction of the court during the tolling period? The lack of jurisdiction could result in a public safety issue in the instance when a probationer's supervisory period is being tolled and during the tolled period the probationer continues to violate his or her probation. The Committee on Crime Prevention, Corrections & Safety adopted an amendment to address the issue. (Please see Section VI.)

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections & Safety adopted an amendment on March 20, 2001, that addressed the jurisdiction issue raised under the Comment Section. The amendment offered new language to clarify that the court retains jurisdiction over the offender during any tolling period. The amendment is currently traveling with the bill.

On April 12, 2001, the Committee on Judicial Oversight adopted one amendment. The amendment permits the court to impose a sentence where the combined amount of time under supervision and time tolled exceeds the maximum provided in s. 775.082, F.S., for a term up to the amount of time tolled. For example, if a probationer was serving a five year probationary term for a third degree felony (the maximum term of incarceration and probation permitted under s. 775.082 for a third degree felony is five years) and during the probationary term, the probationer committed a violation that tolled his probation for three months, the probationer could be sentenced to an additional three months of incarceration, probation, or other supervision at the end of his probationary term. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Melinda A. Smith

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

L. Michael Billmeier

Staff Director:

Lynne Overton

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

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