

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 888

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Community Supervision

DATE: March 20, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gardner	Cannon	CJ	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 888 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. This bill would also give the court jurisdiction over the offender during the time probation or community control is tolled for terms of supervision.

This bill would become effective on July 1, 2001.

This bill substantially amends the following section of the Florida Statutes: 948.06.

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:

1. the judge has signed the warrant, and
2. 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 be issued. 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 provides 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 bill 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. The basis for issuing the warrant would be facts made known to the court in an affidavit by someone, presumably the probation officer, having knowledge of those facts which would show the violation.

The bill 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. While the time is tolled, the term of probation or community control is in a state of suspension. During the tolled time, the court would retain jurisdiction over the offender, and that offender would be subject to the terms of the court ordered supervision.

The bill further provides that if the violation is dismissed, the period of probation or community control shall continue, notwithstanding the time period it was tolled. During the time the probation is tolled by an affidavit, the probationer would still be under supervision. If the

affidavit is dismissed, and the term of probation continues, the probationer would be entitled to day for day credit for all time spent on supervision.

The bill 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:

Only in those cases when an affidavit is filed at or very near the expiration of a term of supervision would a probationer who would otherwise leave supervision be subject to any legal sentence the court could have imposed. In such cases as *Francois v. State*, 695 So.2d 695 (Fla. 1997); *Ware v. State*, 474 So.2d 332 (Fla. 1st DCA, 1985); and *Weeks v. State*, 496 So.2d 942 (Fla. 2nd DCA 1986), the cost of incarceration would increase. The Criminal Justice Estimating Conference has not yet determined a prison bed impact for this bill.

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.
