

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 2001 Probation and Community Control  
**SPONSOR(S):** Committee on Public Safety & Crime Prevention & Barreiro  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 2336

---

| REFERENCE                           | ACTION    | ANALYST  | STAFF DIRECTOR |
|-------------------------------------|-----------|----------|----------------|
| 1) Public Safety & Crime Prevention | 14 Y, 0 N | Whittier | De La Paz      |
| 2) _____                            | _____     | _____    | _____          |
| 3) _____                            | _____     | _____    | _____          |
| 4) _____                            | _____     | _____    | _____          |
| 5) _____                            | _____     | _____    | _____          |

---

### SUMMARY ANALYSIS

HB 2001 reorganizes Chapter 948, F.S., which relates to probation and community control, by subject area. The bill includes no substantive changes, and is the product of an interim project by the Senate Committee on Criminal Justice, in consultation with the Department of Corrections.

Key areas of chapter reorganization include the following:

- Placing the requirements for probation and for community control in separate sections;
- Creating separate sections for special conditions for drug offender probation and sex offender probation and community control;
- Consolidating issues relating to administrative probation; and
- Consolidating issues relating to electronic monitoring.

There appears to be no significant fiscal impact on the state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h2001a.ps.doc  
**DATE:** April 23, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |                                         |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

Chapter 948, F.S., contains the primary statutory provisions governing community supervision. It has been amended to some degree in all but one of the last 30 years. As a result, some sections contain multiple programs and ideas and the chapter is not well-organized.

The current system for probation and community control programs began in 1975 when responsibility for supervision of offenders in the community was removed from the authority of the Florida Parole Commission and placed under the control of the Department of Offender Rehabilitation. Prior to the “Correctional Organization Act of 1975,” the Florida Parole Commission employed and directed all the probation and parole officers supervising offenders in the community, and the prison system was a division of the Department of Health and Rehabilitative Services. The Department of Offender Rehabilitation created by this act was later renamed the Department of Corrections. The Department of Corrections has grown to become one of the largest departments in the state, and the Florida Parole Commission has been reduced to a quasi judicial function concerning a shrinking pool of offenders, in large part because of the abolition of parole for offenders sentenced after October 1, 1983.

As of February 29, 2004, there were 151,473 offenders on some form of community supervision in Florida. This number fluctuates as offenders are added to supervision, are released from prison onto supervision, have their supervision revoked and are sent to prison, or successfully complete their term of supervision.

The following table illustrates the types of supervision and the number of offenders for each type:

|                                        |         |
|----------------------------------------|---------|
| Probation (active and active suspense) | 126,102 |
| Standard probation                     | 104,930 |
| Drug offender probation                | 16,858  |
| Sex offender probation                 | 2,841   |
| Administrative probation               | 1,473   |
|                                        |         |
| Community Control                      | 11,826  |
| Standard community control             | 11,473  |
| Sex offender community control         | 353     |
|                                        |         |
| Pretrial Intervention                  | 8,120   |
| Standard PTI                           | 5,268   |
| Drug offender PTI                      | 2,852   |

|                           |       |
|---------------------------|-------|
|                           |       |
| Post-Prison Release       | 5,415 |
| Parole                    | 2,183 |
| Other post-prison release | 3,232 |
|                           |       |
| Other Supervision Types   | 10    |

Two-thirds of the parolees are from out of state and are supervised by the department pursuant to an interstate compact for parole and probation supervision.

All of the offenders listed above are under the supervision of the Department of Corrections. Those on probation, community control, and pretrial intervention are under the jurisdiction of the circuit court, and those on parole and some other form of post-prison release supervision are under the jurisdiction of the Parole Commission.

People who are found to have committed crimes can be placed on some form of community supervision, such as probation or community control, by any court having jurisdiction over criminal actions. The statute recommends community supervision for offenders who appear not likely to reoffend and present the lowest danger to the welfare of society. Generally, this means those offenders whose sentencing guidelines score sheet does not recommend incarceration under the Criminal Punishment Code. There is also the possibility that a person can be diverted to a pretrial intervention program without having to actually go to trial or enter a plea.

Approximately one-fourth of the offenders on community supervision committed theft, forgery, or fraud as their most serious offense. Another one-fourth of the offenders are on community supervision for committing a drug offense. Violent crimes, such as murder/manslaughter, sexual offenses, and robbery account for another one-fourth of the community supervision population. The remaining quarter of the offenders on community supervision committed miscellaneous crimes. Of those placed on probation, 63 percent have no prior community supervision commitments and 87 percent have never been sentenced to prison. Of those placed into community control, 38 percent have no prior community supervision commitments and 81 percent have never been sentenced to prison. Of the nearly 153,000 persons on some form of community supervision, almost 95,000 a year will be removed from supervision and replaced by a slightly higher number of new admissions.

The department supervises all of the offenders who are sentenced to some form of community supervision out of circuit court. Counties manage probation and other types of supervision originating in county court, but this may be contracted out to private entities. Private entities may also handle some pretrial intervention programs.

## TYPES OF SUPERVISION

**Probation** – Probation is a term or sentence imposed by the court with standard statutory conditions as well as special conditions that may be imposed by the court. Probation lasts for a specific period of time that cannot exceed the maximum sentence for the offense. The first two conditions that apply to probation and all forms of supervision require the probationer to report to his or her correctional probation officer and permit the officer to visit the probationer at work, home, or elsewhere. This requirement ensures that contact is maintained throughout the term of probation.

**Administrative Probation** – A probationer who successfully completes half the term of probation and who represents a low risk of harm to the community may be placed on Administrative Probation. This is

a non-reporting status, but periodic record checks are completed to verify that the offender has not violated the law.

**Drug Offender Probation** – Drug offender probation includes intensive supervision that emphasizes treatment of the offender. Correctional probation officers with specific training or experience are assigned to supervise drug offender probationers. The caseloads for these officers are limited to 50 offenders. In addition to the standard terms and conditions of probation, drug offender probation includes an individual treatment plan and additional surveillance and random drug testing.

**Sex Offender Probation and Sex Offender Community Control** – Sex offender probation and sex offender community control also includes intensive supervision that emphasizes treatment. As with any form of community control, it may include electronic monitoring. Like drug offender probation, officers with specific training or experience and with limited case loads are assigned to supervise sex offenders. Each offender in this program has an individualized plan of treatment. The standard terms and conditions of probation or community control apply to persons on sex offender probation, along with additional terms and conditions specified in the statutes. These conditions restrict the sex offender in terms of where he or she may live, work, and visit, with whom he or she may associate, and when he or she may be outside the residence. The statute also requires DNA samples, polygraph testing, and active participation in sex offender treatment.

**Community Control** – Community control is a community-based alternative to incarceration or regular probation. It includes supervised house arrest, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is intended for felons who are unsuitable for regular probation because of their criminal background or the seriousness of their crime, but for whom the court deems imprisonment to be unnecessary. It may also be appropriate for some felony probation or parole violators who commit technical or misdemeanor violations. A correctional probation officer is statutorily restricted from having more than 25 community controllees on his or her caseload. Violation of any community control condition may result in revocation by the court and imposition of any sentence which might have been imposed originally.

As with other forms of supervision, all the standard terms and conditions of standard probation apply to persons on community control. In addition to those conditions, the statute permits the court to impose more contact with correctional probation officers, confinement to the residence except during work hours, mandatory public service, and electronic monitoring. Some sex offenders are placed on sex offender community control for heightened supervision.

Electronic monitoring is often used in community control cases to track the offender's movement or monitor compliance with terms of confinement to the residence. Section 948.03(3)(a)1, F.S., gives the department the discretion to place community controllees on electronic monitoring. However, the department does not exercise this discretion because of substantial case law that an offender's failure to submit to electronic monitoring ordered by the department cannot be a basis for revocation of community control.

**Pretrial Intervention** – Florida operates or oversees a number of different pretrial intervention programs, such as drug courts. The criminal justice system diverts some of the least serious offenders into these programs. These programs have conditions similar to probation, including fees, restitution, public service, and counseling to prevent a return to criminal behavior.

The chief judge of each circuit appoints an advisory committee that includes representatives of the prosecution, defense, and others to oversee the programs. Admission is limited to first time offenders who are charged with a third degree felony or less. Prior agreement of the state attorney and any victim is required, and the participant must waive his or her right to a speedy trial for the duration of the program. If the participant successfully completes the program, the state dismisses the charges and he or she avoids a criminal record. Noncompletion of the program results in normal prosecution of the case.

**Other Forms of Supervision** – The department supervises a limited number of post-prison offenders on parole, conditional release, and control release. The provisions and conditions for these programs are outlined in Chapter 947, F.S., which deals with the Florida Parole Commission. This type of term of supervision is ordered by the commission rather than the sentencing court. Eligibility for parole was closed in 1983 when the sentencing guidelines were established. Other types of post-prison release supervision include provisional release, supervised community release, conditional pardons, county work release, and addiction recovery supervision.

The conditional release program applies to certain inmates convicted for committing very serious crimes who are released from incarceration prior to completion of their sentence due to application of gain time credits. These inmates must serve the remainder of their full sentence on community supervision.

The bill reorganizes Chapter 943, F.S., in a manner that breaks out the requirements for different forms of supervision into separate sections without making substantive revisions to the chapter.

Key areas of chapter reorganization include the following:

- Placing the requirements for probation and for community control in separate sections;
- Creating separate sections for special conditions for drug offender probation and sex offender probation and community control;
- Consolidating issues relating to administrative probation; and
- Consolidating issues relating to electronic monitoring.

C. SECTION DIRECTORY:

**Sections 1- 33** technically amend the following statutes by transferring and consolidating current language, correcting cross-references, and reenacting sections for the purpose of incorporating amendments: ss. 948.001, 948.01, 948.10, 948.012, 948.20, 948.101, 948.013, 948.011, 948.03, 948.11, 948.31, 948.30, 948.035, 948.036, 948.037, 948.014, 948.038, 948.039, 948.06, 948.32, 948.09, 948.04, 440.02, 775.21, 812.0155, 921.0017, 921.187, 947.23, 958.14, 944.4731, and 947.1747, F.S.

**Section 34** provides that if any amendment made by the provisions of this act conflicts with any substantive amendment made to Chapter 948, F.S., by other legislative enactments passed in the 2004 Regular Session, the provisions of this act shall be subordinate to other enactments, regardless of the order of passage.

**Section 35** provides an effective date of July 1, 2004.

## II. 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.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**