

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1385 CS Probation and Community Control
SPONSOR(S): Hukill; Porth
TIED BILLS: none **IDEN./SIM. BILLS:** CS/SB 172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N, w/CS	Bond	Kramer
2) Justice Appropriations Committee			
3) Justice Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill changes the law regarding probation to:

- Provide that law enforcement may make a warrantless arrest of an apparent probation violator who has a history of violent offenses.
- Provide that local law enforcement must assist probation officers in arresting and transporting probation violators upon request of a probation officer, "to the extent possible."
- Require the Department of Corrections identify high risk probationers, supervise them closely, and provide additional reports to the courts regarding such high risk probationers.
- Require the Department of Corrections to report on the circumstances surrounding any new violent crime committed by a probationer; and require OPPAGA to review those reports and provide a summary with suggestions to the 2006 legislature.
- Ask the Supreme Court to amend the Criminal Rules of Procedure to eliminate bail eligibility for certain probation violators pending hearing on the violation.

The Criminal Justice Estimating Conference estimates that this bill will have an indeterminate minimal prison bed impact. The Department of Corrections estimates that this bill will require recurring expenditures commencing in FY 2005-2006 of \$2.7 million (38 FTE's). This bill may have an indeterminate but significant impact on local government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill requires the Department of Corrections to assume a number of duties not currently required by law. The department estimates that it would require an additional 38 employees to perform the required tasks.

B. EFFECT OF PROPOSED CHANGES:

OVERVIEW OF PROBATION AND COMMUNITY CONTROL

As of December 31, 2004, there were 146,692 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 who are on probation or community control, the most common types of community supervision:

Probation (active and active suspense)	122,477
Standard probation	99,609
Drug offender probation	17,711
Sex offender probation	3,221
Administrative probation	1,936
Community Control	10,908
Standard community control	10,615
Sex offender community control	293

Felony probationers and community controllees are under the jurisdiction of the circuit court, and are supervised by the Department of Corrections.

Approximately one-fourth of the offenders on probation or community control committed theft, forgery, or fraud as their most serious offense. Another one-fourth are on community supervision for committing a drug offense. Murder/manslaughter, sexual offenses, robbery, and other violent crimes account for another one-fourth of the community supervision population. 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, 39 percent have no prior community supervision commitments and 82 percent have never been sentenced to prison.

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 require intensive supervision that emphasizes treatment. As with any form of community control, it may also 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 punishment 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, and the additional sex offender conditions discussed in the section on sex offender probation are applied.

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 and other Forms of Supervision – 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. If the participant successfully completes the program, the state dismisses the charges and the defendant avoids a criminal record related to that offense. Non-completion of the program results in normal prosecution of the case.

The department also 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 ch. 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. As of December 31, 2004, there were 2,886 offenders on active or active-suspense control release supervision.

Violation of Probation or Community Control

Chapter 948, F.S., includes an extensive list of terms of probation or community control which may be imposed by a sentencing court, as well as mandatory conditions that must be imposed for certain offenses. Under s. 948.06, F.S., whenever there are reasonable grounds to believe that a probationer or community controllee has violated the terms imposed by the court in a material respect, the offender may be arrested without warrant by any law enforcement officer or parole and probation supervisor who is aware of his or her status as a probationer or community controllee. The court may also issue an arrest warrant based upon reasonable cause that the conditions have been violated. In either case, after arrest the offender is returned to the court that imposed the sentence.

Once brought before the court for an alleged violation, the offender is advised of the charge. If the charge is not admitted, the court may commit the offender to jail to await a hearing, release the offender with or without bail, or dismiss the charge. If the offender admits the charge or is determined to have committed the violation after a hearing, the court may revoke, modify, or continue the probation or community control. If probation or community control is revoked, the court must adjudge the offender guilty of the offense for which he or she was on community supervision, and may impose any sentence which it might have originally imposed before placing the offender on probation or into community control.

Under current law, local law enforcement officers are not required to assist probation officers in making a warrantless arrest of an alleged violator. Probation officers have arrest powers, and are given special risk retirement benefits as are law enforcement officers. They often do not make a warrantless arrest of an offender, however, instead referring a violator to the court for issuance of a warrant.¹ Once a warrant is issued, local law enforcement officers may arrest the violator. There is an inherent time lag involved when a probation officer files the paperwork seeking arrest of an offender.

Effect of Bill:

Law Enforcement Assistance with Arrest and Transport

This bill amends s. 947.22(2), F.S., related to parole, to provide that a parole and probation officer may request a local law enforcement officer to arrest a parole violator. "To the extent possible," local law enforcement officers are required to assist a parole and probation officer in making a warrantless arrest of an alleged parole violator, transporting the violator to the county jail.

¹ In testimony on similar bills filed in previous years, probation officers pointed to a number of practical difficulties that they face should they decide to make a warrantless arrest. Foremost is transportation, probation officers are not issued state vehicles (they are reimbursed for mileage) and thus have to transport an arrested person in the probation officer's personal vehicle. Probation officers are not in uniform, are not issued firearms, and are limited in how and where they carry firearms.

This bill similarly amends s. 948.06(1), F.S., related to probation, to provide that a probation officer may request a local law enforcement officer to arrest a parole violator. "To the extent possible," local law enforcement officers are required to assist a probation officer in making a warrantless arrest of an alleged parole violator, transporting the violator to the county jail.

Warrantless Arrest of Offenders with a History of Convictions for Violence

The bill adds s. 948.06(1)(a)2., F.S., to provide that a local law enforcement officer, or a probation supervisor, may make an immediate, warrantless arrest of a person on probation or an offender on community control if: (1) the law enforcement officer or parole or probation supervisor has reasonable grounds to believe that the offender has violated the conditions of his or her community supervision in a material respect; and (2) the officer or supervisor is aware that the offender has a history of convictions for violence. Local law enforcement is required to assist probation officers in making such arrests "to the extent possible."

High Risk Offenders

The bill creates s. 948.061, F.S., regarding high-risk offenders. The bill requires the Department of Corrections to, by December 1, 2005, develop a "graduated risk assessment and alert system that continuously identifies, assesses, and monitors offenders who are high risk."

An offender who has previously been placed on community supervision and has a history of committing multiple community supervision violations is a high risk offender. Also, an offender who has previously been incarcerated and who has experienced two or more of the following risk factors that could make the offender more likely to pose a danger to other persons is a high risk offender:

- Attempted suicide or severe depression
- Marital instability or history of domestic violence
- History of substance abuse
- Unemployment or substantial financial difficulties
- History of violence, particularly if it involved strangers
- Any other risk factor identified by the department

This bill makes a finding that an offender with an extensive criminal history and multiple risk factors may pose a serious threat to the community. The Department of Corrections is directed to consider the cumulative impacts of these risk factors, and, if appropriate, the department must place such a high risk offender "on an elevated alert status and provide a high level of supervision for the offender until the situation stabilizes and the department no longer believes that the offender poses a threat to others."

Methods of increasing supervision include more frequent office and home visits; more contact with employers, families, and the neighborhood; increased referrals to community mental health facilities and assistance programs; and development of emergency plans to facilitate detention and apprehension if necessary.

Criminal History Information Provided to Courts

As to any high risk offender, this bill requires a correctional probation officer to provide the court with "a clear, complete, and concise cumulative and integrated chronology" of the offender's criminal history, prior terms of supervision, and prior violations.

Requirement to Review and Report on Serious Felony Violations

The bill creates s. 948.062, F.S., to require the department to review the circumstances of any violation of probation or community control in which any supervised offender was arrested for:

- Murder
- Sexual battery
- Sexual performance by a child
- Kidnapping, false imprisonment, or luring of a child
- Lewd and lascivious battery
- Lewd and lascivious molestation
- Aggravated child abuse
- Robbery with a firearm or other deadly weapon
- Home invasion robbery
- Carjacking
- Aggravated stalking

The review and report requirement also applies to arrest of a supervised offender for:

- A forcible felony if the supervised offender is designated as a sexual predator
- DUI manslaughter or vehicular or vessel homicide, if the offender was under supervision for an offense involving death or injury resulting from a driving incident

The review must document whether the supervision met rules, policies, and procedures and whether supervision practices were followed.

The department must provide these reviews to the Office of Program Policy Analysis and Government Accountability (OPPAGA). OPPAGA must analyze the reviews and provide a report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2006. OPPAGA's report must include any identified systemic deficiencies in managing high-risk offenders on community supervision, any patterns of noncompliance by correctional probation officers, and recommendations for improving the community supervision program.

Suggested Amendment of Rules of Procedure Regarding Release Pending Hearing

The Florida Rules of Criminal Procedure, promulgated by the Supreme Court, allow a court to release a probation or community control violator on bail pending hearing. Section 5 of the bill includes a legislative request for the Supreme Court to revise the Florida Rules of Criminal Procedure in this regard. The bill requests that the Court prohibit release on bail pending a hearing on the alleged violation of probation or community control if the offender is currently on community supervision for a forcible felony or if the offender had previously been convicted of a forcible felony.

Impact on Department of Corrections

Section 6 of the bill provides that implementation of the bill is not contingent upon appropriations. The Department of Corrections will be required to implement the bill regardless of whether it receives an additional appropriation related to this bill. It is unclear how the department would accomplish these tasks without additional appropriations.

C. SECTION DIRECTORY:

Section 1 amends s. 947.22, F.S., to require local law enforcement to assist probations officers in arresting and transporting probation and parole violators, where possible.

Section 2 amends s. 948.06, F.S., to require local law enforcement to assist probations officers in arresting and transporting probation and parole violators, where possible.

Section 3 creates s. 948.061, F.S., requiring the Department of Corrections to develop and implement a probation system for high-risk offenders; and requiring the department to provide courts with comprehensive criminal history backgrounds regarding high-risk offenders.

Section 4 creates s. 948.062, F.S., requiring the Department of Corrections to review, and report on, all serious offenses committed by offenders on probation or community control.

Section 5 requests the Supreme Court to amend the Rules of Criminal Procedure to eliminate bail for certain probation violators.

Section 6 states that this bill is not contingent on an appropriation.

Section 7 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference assesses the impact of the bill on the need for prison bed space as minimal-indeterminate (from SB 2284, 2004 session).

The Department of Corrections estimates that providing information to courts on high risk probation violators would require an additional 19 correctional probation officers, 2 supervisors, and 3 clerical support personnel. The recurring cost of these additional personnel would be approximately \$1.6 million.

Estimated Cost to Review and Report New Law Violations

The department estimates that the bill's requirement for review and reporting of serious offenses would require 12 new correctional officer senior inspectors, 1 supervisor, and 1 secretary specialist at a cost of \$1,159,280 for fiscal year 2005-2006.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local law enforcement agencies have expressed concern that a requirement for local law enforcement agencies to assist with the transportation of community supervision violators upon the request of a correctional probation officer could have a significant fiscal impact on the local agencies. However, the amount of the impact has not been determined.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides sufficient rulemaking power.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 13, 2005, the Criminal Justice Committee adopted one "remove everything after the enacting clause" amendment matching the bill to the Senate companion. The amendment:

- As filed, the bill required local law enforcement officers to make a warrantless arrest of a violator upon request of any probation officer. The amendment provides that local law enforcement is to assist a probation officer "to the extent possible."
- As filed, the bill required the Department of Corrections to provide an expanded criminal history report to the court regarding any probation violator. The amendment limited this requirement to high-risk offenders.
- As filed, the bill required annual reports by the department and OPPAGA regarding certain violations. The amendment reduces this to a single report due March 1, 2006, and narrowed the scope of the report.
- The amendment adds a statement that the bill is not contingent upon an appropriation.

The bill was then reported favorably with a committee substitute.