The Florida Senate

PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL:	CS/SB 1794
INTRODUCER:	Criminal Justice Committee; and Criminal Justice Committee
SUBJECT:	Probation
DATE:	March 21, 2007 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.			JU	
3.			JA	
4.				
5.				
6.				

I. Summary:

This bill originated from recommendations made in Senate Interim Project Report 2007-110, "Convicted Felons on Probation and Prevention of Subsequent Crimes." It authorizes judges to issue notices to appear to offenders who are alleged to have violated probation or community control, rather than having them arrested and jailed. A notice to appear could be issued at the judge's discretion, except that it is not authorized for offenders who have committed one of the Anti-Murder Act qualifying offenses. The bill provides for service of the notice by a probation officer, and tolls the probationary period when a notice to appear is issued or a warrantless arrest is made.

The bill requires the chief judge of each judicial circuit to direct the Department of Corrections to use a notification letter to the court when reporting a violation of probation that does not involve a new criminal offense. The judge has discretion to determine when it is appropriate to use a notification letter.

The bill also requires the department to provide the court with a recommendation for disposition of a case in which an offender admits to or is found to have violated probation or community control. The court may specify whether the report is to be oral or written, and may waive the requirement in any case or class of cases.

If authorized by the court, the department may deliver affidavits, violation reports, notification letters of technical violation, and other documents by e-mail or facsimile.

The bill also addresses an OPPAGA recommendation to remove statutory caseload restrictions applying to certain categories of offenders supervised by the department. OPPAGA has found

that the current statutory restrictions hinder appropriate supervision for high-risk offenders who are not in the statutorily-restricted caseload categories. The bill directs the department to study the effect of removing the caseload restrictions and managing probation officer caseloads based upon an assessment of risk, and report the results to the Legislature and the Governor.

This bill substantially amends section 948.06 of the Florida Statutes.

II. Present Situation:

Almost 111,000 offenders are actively supervised by the Department of Corrections on some form of community supervision.[1] Florida law recommends community supervision for offenders who do not appear to be likely to reoffend and who present the lowest danger to the welfare of society. Generally, this includes those offenders whose sentencing score sheet result does not fall into the range recommending incarceration under the Criminal Punishment Code.

The two major types of community supervision are probation and community control. Community control is a higher level of supervision that is administered by officers with a statutorily mandated caseload limit. Both probation and community control are judicially-imposed sentences that include standard statutory conditions as well as any special conditions that are directed by the sentencing judge.[2]

Approximately one-fourth of the supervised offenders are on probation or community control for committing murder, manslaughter, a sexual offense, robbery, or another violent crime. Another one-fourth have theft, forgery, or fraud as their most serious offense, and drug offenders account for another one-fourth.

The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) examined the state's felony community corrections program and issued a report in April 2006.[3] OPPAGA found that offenders classified as maximum risk commit a disproportionate number of offenses that are defined as serious under the Jessica Lunsford Act while they are under community supervision.[4] OPPAGA also reported that resources are not directed at offenders who pose the highest risk and that supervision is hindered by administrative tasks. As a consequence, OPPAGA recommended that statutory minimum caseload requirements should be removed and that the department should manage supervision based upon the offender's level of risk. Currently, there are three statutorily mandated caseload restrictions: s. 948.001(4), F.S., limits officers with a drug offender probation caseload to supervising 50 offenders, s. 948.10(3), F.S., limits officers with a community control caseload to supervision of no more than 25 offenders, and s. 948.12, F.S., limits officers to a maximum caseload of 40 offenders when they are supervising violent offenders after release from prison.

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[1] All data concerning community supervision are from the Department of Corrections Monthly Status Report of Florida's Community Supervision Population, November 2006.

[2] Standard conditions are specified as such in statute and do not require oral pronouncement at sentencing. Special conditions include any other condition and are not enforceable unless orally pronounced by the court at the time of sentencing. *See Jones v. State*, 661 So.2d 50 (Fla 2nd Dist. 1995). Some special conditions are included in the statutes as options for the sentencing court, and others are devised by the court.

[3] OPPAGA Report No. 06-37, "Several Deficiencies Hinder the Supervision of Offenders in the Community Corrections Program," April 2006.

[4] These offenses include murder, sexual offenses, robbery, carjacking, child abuse, and aggravated stalking.

Violation of Probation or Community Control

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. A judge 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,[5] or dismiss the charge. If the offender admits the charge or is judicially determined to have committed the violation, the court may revoke, modify, or continue community supervision. If supervision is revoked, the court must adjudge the offender guilty of the offense for which he or she was on community supervision, and can impose any sentence that could have been imposed at the original sentencing.

A Senate Interim Project Report noted concerns that have been raised about the department's "zero tolerance policy" toward probation violation allegations and discussed the effect of the policy in detail.[6] The report pointed out that the murders of 11-year old Carlie Brucia in February 2004 and of six young people in Deltona in August 2004 prompted the department to fully implement the policy. The following aspects of zero tolerance are relevant to this bill:

- It eliminated probation officer discretion in officially reporting an alleged technical violation to the court, especially if the violation was a minor one.
- It halted the practice of having probation officers recommending a disposition to the court when the judge finds that community supervision has been violated.

The judiciary has been critical of the policy shift. A particular concern to judges was the decision to withhold a probation officer's recommendation to the court when an offender is before the court for a violation. Testimony was presented by judges at a joint Senate-House committee who held the opinion that the probation officer is the person most knowledgeable about the defendant. Absent their presence in the courtroom and recommendation to the court, some judges questioned whether they would have enough documentation to make intelligent decisions about pending probation violation cases.

As of December 31, 2006, 36,387 violations were pending against offenders who are on active or active-suspense status (a total of 151,620 offenders). This represents a rate of 240 violations per 1,000 offenders.

[5] The Anti-Murder Act, ch. 2007-2, Laws of Florida, prohibits pre-hearing release of violent felony offenders of special concern. Also, s. 948.06(4), F.S., a provision of the Jessica Lunsford Act, requires the court to make a finding that offenders who have committed certain sex offenses or are a registered sex offender or sex predator are not a danger to the public prior to release under any conditions.

[6] Senate Interim Project Report 2006-109, "Review of Sanctions Ordered for Violations of Probation," January 2006.

III. Effect of Proposed Changes:

Section 1 of this bill amends s. 948.06, F.S., in several ways. It specifically authorizes the court to issue notices to appear to offenders who are alleged to have violated probation or community control. A notice to appear could not be used in the case of an offender who has been convicted of committing one of the qualifying offenses listed in the Anti-Murder Act, or who is currently alleged to have committed one of those offenses. Probation officers would be authorized to serve notices to appear, but the bill does not provide any guidance as to whether they would have to do so as a special task or could do so in the course of a scheduled office or home visit with the offender.

Section 948.06(1)(d), F.S., currently provides for tolling of the probationary period after a warrantless arrest. This is to prevent the expiration of a probationary period while the offender is pending resolution of violation charges. The bill provides for tolling after issuance of a notice to appear or a warrantless arrest.

A new paragraph is added to s. 948.06(1), F.S., to require the chief judge of each judicial circuit to direct the department to use a notification letter to inform judges of alleged violations of community supervision not involving a new criminal offense. This direction must be in writing and must specify the types of violations that are to be included, any exceptions, and the process for submitting the letter. The letter is to be used in lieu of a violation report, affidavit, or warrant. The purpose of the notification letter is to allow the court to regulate its practice in dealing with violations that it considers to be less serious.

The bill creates another new section that allows the department to deliver violation reports, notification letters of technical violation, and other reports relevant to the probation violation process by e-mail or facsimile if authorized by the court.

Section 948.06(2), F.S., is amended to require the department to provide the court with a recommendation for disposition of any case in which an offender is found to have violated supervision, whether by admission or after a contested hearing. The department provided a recommendation upon request until it developed a policy against the practice several years ago. This provision is intended to allow the court to obtain input from a probation officer if it considers it to be useful in making a decision to send the offender to prison or to determine the appropriate type and conditions of supervision. The recommendation must include:

- Evaluation of the appropriateness or inappropriateness of community facilities, programs, or services for supervising the offender;
- A statement of what the department considers to be an adequate level of community supervision and of the department’s ability to provide that level of supervision;
- Consideration of the existence of treatments that could be useful to the offender but that are not available in the community.

The court may specify whether the report is to be oral or in writing, or may waive the requirement for a particular case or class of cases. The provision is not intended to prevent the department from making other reports as requested or authorized.

Section 2 of the bill requires the department to conduct a caseload and risk-assessment study concerning statutory restrictions on the caseload of correctional probation officers. The study would assess the benefits and risks of moving to caseload management based upon assessment of risk without the caseload restrictions that currently apply to drug offender probation, community control, and post-prison violent offender supervision. As previously noted, risk-based caseload management has been recommended by OPPAGA. The department must submit its report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2007.

The bill includes a provision making it effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

New s. 948.06(1)(e), F.S., directs the chief judge of each circuit to use a notification letter of technical violation to notify the court of certain violations in appropriate cases. All details of the notice, including what types of offenses it would apply to and how it is to be submitted, are determined by the chief judge. While on the surface this provision raises questions of infringement on the judiciary's constitutional authority, it is effectively an authorization and not a mandate.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department has not determined a fiscal impact for this bill. However, department representatives have expressed concern that service of notices to appear by probation officers could require a substantially increased workload.

It can be anticipated that providing a recommendation for disposition of violation cases will increase the workload for probation officers, but no determination has been made of increased costs.

The use of notices to appear would decrease costs to the counties to the extent that it reduces arrests and jailing of offenders pending a violation hearing.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Anti-Murder Act (ch. 2007-2, Laws of Florida) includes provisions prohibiting release of certain violent probationers and community controllees prior to judicial disposition of any alleged violation of community supervision. This bill does not permit use of notices to appear for such offenders.

VIII. Summary of Amendments:

None.