

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7113 PCB SSC 07-06 Department of Corrections

**SPONSOR(S):** Safety & Security Council; Adams

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Safety & Security Council	10 Y, 0 N	Cunningham	Havlicak
1) Policy & Budget Council	(W/D)		
2)			
3)			
4)			
5)			

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### SUMMARY ANALYSIS

Currently, vehicles owned, operated, or leased by the Department of Corrections are authorized to show or display blue lights when responding to emergencies. Department vehicles are *not* currently authorized to operate sirens. This bill adds Department vehicles to the definition of "authorized emergency vehicles" contained in s. 316.003, F.S., and authorizes them to operate lights *and sirens* in an emergency.

The Department operates the Employee Benefit Trust Fund whose funding is derived primarily from the proceeds of vending machines not intended for use by inmates. The bill clarifies that proceeds from the employee canteen and from the recycling program can be a source for funding the trust fund, and expands permissible uses of the fund to include employee appreciation programs and activities. It also provides for centralized oversight and reporting of each institution's fund.

The bill also 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 document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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**DATE:** 4/24/2007

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill authorizes the Department of Corrections to adopt rules relating to the Employee Benefit Trust Fund and requires the department to conduct a caseload and risk-assessment study.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Authorization to Use Sirens**

Currently, vehicles owned, operated, or leased by the Department of Corrections (Department) are authorized to show or display blue lights when responding to emergencies.<sup>1</sup> Department vehicles are *not* currently authorized to operate sirens.

In their analysis of this bill, the Department stated that blue lights are currently installed on canine vehicles and inmate transport vehicles, which are often used as chase vehicles to follow emergency medical services (EMS) vehicles that transport inmates to hospitals. The Department stated that without sirens, the public is not often aware that a Department vehicle is chasing an EMS vehicle, and that the vehicle often gets stuck in traffic. The Department stated that authorizing such vehicles to have sirens would better alert the public to the Department's response in an emergency situation.

##### *Effect of the Bill*

This bill adds Department vehicles to the definition of "authorized emergency vehicles" contained in s. 316.003, F.S. Drivers of authorized emergency vehicles are permitted to exceed speed limits and to disregard traffic control devices and other traffic laws when responding to an emergency as long as due regard is given to safety.<sup>2</sup> Also, drivers of other vehicles are required to yield the right-of-way and pull over to the side of the road when an authorized emergency vehicle is giving an audible or visual signal that it is on emergency business.<sup>3</sup>

Inclusion as an authorized emergency vehicle does not automatically confer authority to operate a siren. Therefore, the bill also amends s. 316.2397, F.S., to permit DOC to designate or authorize vehicles to use a siren in an emergency.

##### **Employee Benefit trust Funds**

The department operates an Employee Benefit Trust Fund that is authorized by s. 945.215(3), F.S., and established by s. 945.21501, F.S. The Fund's purpose is to construct, operate, and maintain training and recreation facilities at correctional facilities for the exclusive use of department employees. The statutorily-authorized revenue sources are proceeds from vending machines and other such services not intended for use by inmates and donations not made by or on behalf of an individual inmate. The department reports the following approximate annual income to the Trust Fund:

Net proceeds from staff vending and staff canteen	\$1,100,000
Net proceeds from recycling	\$50,000
Proceeds from shoe shine/staff barber	<u>\$20,000</u>
	\$1,170,000

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<sup>1</sup> s. 316.2397(2), F.S.

<sup>2</sup> See ss. 316.072(5) and 316.074, F.S.

<sup>3</sup> See s. 316.126, F.S.

Proceeds from recycling are first deposited into the General Revenue Fund to pay the costs of the recycling program. After costs are paid, the net proceeds are transferred into the Employee Benefit Trust Fund to provide an incentive for participation in the program.

#### *Effect of the Bill*

This bill specifies that trust fund sources may be derived from staff canteens and net proceeds of the recycling program. The bill also prohibits trust fund sources from being derived from donations made by vendors or prospective vendors.

The bill specifies that one of the purposes of the trust fund is to provide funding for employee appreciation programs and activities designed to enhance the morale of employees, and authorizes the trust's funds to be used for such purposes.

Additionally, the bill requires that the trust fund be established as a separate and distinct set of accounts which must be maintained centrally by the Department, overseen by the secretary of the Department, and subject to annual audit by the Department's inspector general. The bill requires the Department to maintain sufficient data to provide an annual report, upon request, to the President of the Senate, Speaker of the House of Representatives, and the Governor's Office, which lists the types of services provided using trust fund moneys and the allocation of funds spent. The bill further requires the Department to establish rules.

#### **Violations of Probation or Community Control**

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.

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, 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.<sup>4</sup> 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.

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<sup>4</sup> Senate Interim Project Report 2006-109, "Review of Sanctions Ordered for Violations of Probation," January 2006.

### *Effect of the Bill*

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<sup>5</sup>, or who is currently alleged to have committed one of those offenses. The bill authorizes probation officers to serve notices to appear.

Section 948.06(1)(d), F.S., currently provides for tolling of the probationary period upon the filing of an affidavit alleging a violation and following issuance of a warrant. 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 may 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.

### **Caseload Restrictions**

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.<sup>6</sup> 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.<sup>7</sup> 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

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<sup>5</sup> ch. 2007-2, Laws of Florida.

<sup>6</sup> OPPAGA Report No. 06-37, "Several Deficiencies Hinder the Supervision of Offenders in the Community Corrections Program," April 2006.

<sup>7</sup> These offenses include murder, sexual offenses, robbery, carjacking, child abuse, and aggravated stalking.

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.

#### *Effect of the Bill*

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. 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.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 316.003, F.S., relating to definitions.

**Section 2.** Amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

**Section 3.** Amends s. 945.215, F.S., relating to inmate welfare and employee benefit trust funds.

**Section 4.** Amends s. 945.21501, F.S., relating to Employee Benefit Trust Fund.

**Section 5.** Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

**Section 6.** Requiring the Department of Corrections to conduct a caseload and risk-assessment study.

**Section 7.** This bill takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The department estimates that it would incur a one-time expense of \$35,070 to purchase and install sirens in 167 authorized emergency vehicles. It also projects a cost of \$71,500 for 550 security staff personnel to receive specialized training in emergency vehicle operations.

It does not appear that the amendments to the trust fund would have a fiscal impact based upon the Department's current practice.

The department has not determined a fiscal impact for the "violation of probation or community control" portion of this bill. However, in their analysis of the bill, the department expressed concern that authorizing probation officers to serve notices to appear may substantially increase such officers' workload.

Additionally, the requirement that probation officers provide the court a recommendation for disposition of violation cases may increase the workload for probation officers.

The Department may also incur costs related to the caseload and risk-assessment study.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

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.

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:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

This bill provides requires the Department, pursuant to ss. 120.536(1) and 120.54, F.S., to adopt rules regarding the purposes of the Employee Benefit Trust Fund, how trust fund sources may be derived, how the trust's funds may be used, how accounts of the trust fund will be established and overseen, and the Department's responsibility to maintain certain trust fund data for purposes of annual reports. The bill appears to give sufficient rule making authority that is appropriately limited.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

Not applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**