

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 233 Misdemeanor Probation Services

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Rouson

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 498

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	Williams	Cunningham
2) Judiciary Committee	17 Y, 1 N, As CS	Williams	Havlicak

SUMMARY ANALYSIS

Section 948.15, F.S., relating to misdemeanor probation, currently authorizes misdemeanor probation services to be provided by both public and private entities under the supervision of the board of county commissioners or the court. Private entities who wish to provide misdemeanor probation services must contract with the county in which the services are to be rendered.

The bill amends 948.15, F.S., to require a licensed substance abuse service provider, as defined under ch. 397, F.S., to provide probation supervision services that include substance abuse education and intervention services, in instances where the board of county commissioners or court has established a misdemeanor probation program targeting defendants convicted of a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., unless the provider is exempt from such licensure.

This bill may have a fiscal impact on counties. See "Fiscal Comments."

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Misdemeanor Probation Services

Section 948.15, F.S., relates to misdemeanor (i.e., county) probation. The term for misdemeanor probation generally cannot exceed 6 months unless otherwise specified by the court.¹ Currently, misdemeanor probation services can be provided by both public and private entities under the supervision of the board of county commissioners or the court.²

Private entities who wish to provide misdemeanor probation services must contract with the county in which the services are to be rendered.³ Terms of the contract must state, but are not limited to:

- The extent of the services to be rendered by the entity providing supervision or rehabilitation.
- Staff qualifications and criminal record checks of staff in accordance with essential standards established by the American Correctional Association as of January 1, 1991.
- Staffing levels.
- The number of face-to-face contacts with the offender.
- Procedures for handling the collection of all offender fees and restitution.
- Procedures for handling indigent offenders which ensure placement irrespective of ability to pay.
- Circumstances under which revocation of an offender's probation may be recommended.
- Reporting and recordkeeping requirements.
- Default and contract termination procedures.
- Procedures that aid offenders with job assistance.
- Procedures for accessing criminal history records of probationers.⁴

Private entities must also provide the chief judge's office with a quarterly report summarizing the number of offenders supervised, payment of the required contribution under supervision or rehabilitation, and the number of offenders for whom supervision or rehabilitation will be terminated.⁵ Additionally, all records of the private entity must be open to inspection upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or agents thereof.⁶

Private entities that provide misdemeanor probation services to offenders and that charge a fee for such services must also register with the board of county commissioners in the county in which the services are offered, and provide the following information for each program it operates:

- The length of time the program has been operating in the county.
- A list of the staff and a summary of their qualifications.
- A summary of the types of services that are offered under the program
- The fees the entity charges for court-ordered services and its procedures, if any, for handling indigent offenders.⁷

Effect of the Bill

The bill amends 948.15, F.S., to require a licensed substance abuse service provider, as defined under ch. 397, F.S., to provide probation supervision services that include substance abuse education and

¹ If the use of alcohol was a significant factor in the misdemeanor offense, the period of probation may be up to 1 year. Section 948.15(1), F.S.

² Section 948.15(2), F.S.

³ In a county with a population of less than 70,000, the county court judge, or the administrative judge of the county court in a county that has more than one county court judge, must approve the contract. Section 948.15(3), F.S.

⁴ Section 948.15(3), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 948.15(4), F.S.

intervention services, in instances where the board of county commissioners or court has established a misdemeanor probation program targeting defendants convicted of a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., unless the provider is exempt from such licensure under s.397.405, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 948.15, F.S., relating to misdemeanor probation services.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill amends 948.15, F.S., to require a licensed substance abuse service provider, as defined under ch. 397, F.S., to provide probation supervision services that include substance abuse education and intervention services, in instances where the board of county commissioners or court has established a misdemeanor probation program targeting defendants convicted of a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., unless the provider is exempt from such licensure under s. 397.405, F.S. This may require an increase in expenditures for counties that currently have such programs and use a less-expensive entity to provide probation supervision services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Current law authorizes misdemeanor probation services to be provided by both public and private entities under the supervision of the board of county commissioners or the court.⁸ The bill amends current law to *require* a licensed substance abuse service provider, as defined under ch. 397, F.S., to provide probation supervision services that include substance abuse education and intervention

⁸ Section 948.15(2), F.S.

services, in instances where the board of county commissioners or court has established a misdemeanor probation program targeting defendants convicted of a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., unless the provider is exempt from such licensure. Since the bill may require increased expenditures by counties for which no funding source is provided and imposes constraints on counties, the bill could constitute a mandate as defined in Article VII, Section 18 of the Florida Constitution.

Laws that have an insignificant fiscal impact are exempt from the requirements of Article VII, Section 18 of the Florida Constitution. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on Florida's estimated population on April 1, 2011,⁹ a bill that has a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.89 million would be characterized as a mandate. It is unknown at this time how much counties would be required to spend to provide the probation supervision services required by the bill. If the fiscal impact is less than \$1.89 million, the impact is insignificant, and an exemption to the mandates provision exists.

This bill could also be deemed exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2012, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment requires a licensed substance abuse education and intervention provider to provide probation supervision services, in addition to substance abuse education and intervention services, where the board of county commissioners or court has established a misdemeanor probation program targeting defendants convicted of a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S.

On February 22, 2012, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment requires a licensed substance abuse service provider, as defined under ch. 397, F.S., to provide probation supervision services that include substance abuse education and intervention services, in instances where the board of county commissioners or court has established a misdemeanor probation program targeting defendants convicted of a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., unless the provider is exempt from such licensure under s. 397.405, F.S.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

⁹ Florida Population Estimates for Counties and Municipalities: April 1, 2011. (<http://edr.state.fl.us/Content/population-demographics/data/index.cfm>)(on file with House Criminal Justice Subcommittee staff).