

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1091 Arrest Warrants for State Prisoners

SPONSOR(S): Plakon

TIED BILLS: **IDEN./SIM. BILLS:** SB 894

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Merlin	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In some circumstances, a defendant who was sentenced to probation or community control in one county may violate the terms of his supervision and flee the county. The defendant may later commit an unrelated crime in a different county, which results in a conviction and sentence for the new offense.

The sheriff where the probation or community control originated may file a detainer with the correctional institution where the defendant is incarcerated, requesting that the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent. However, the sheriff is not required to serve or execute an arrest warrant while the defendant is being held on the detainer.

A detainer is not the equivalent of an arrest and does not trigger a probationer's right to be brought before the court that placed him on probation or community control for a violation of probation ("VOP") or violation of community control ("VCC") hearing. As a result, a defendant may not be sentenced for the VOP or VCC until after he or she has served his or her prison sentence for the new charges.

The bill creates s. 948.33, F.S., to address unserved arrest warrants for state prisoners. Under the bill:

- A state prisoner who has an unserved VOP or violation of community control ("VCC") warrant for his or her arrest may file a state prisoner's notice of unserved warrant in the circuit court of the judicial circuit where the unserved warrant was issued;
- The prisoner must also serve notice on the state attorney of that circuit;
- The circuit court must schedule the notice for a status hearing within 90 days after receipt of the notice; and
- The state prisoner may not be transported to the status hearing.

At the status hearing, the state attorney must inform the court as to whether there is an unserved VOP or VCC warrant for the arrest of the state prisoner. If there is an outstanding warrant, the court must enter an order within 30 days after the status hearing to transport the state prisoner to the county jail of the county that issued the warrant. The court must send the order to the county sheriff for execution.

The Criminal Justice Impact Conference ("CJIC") has not met to consider the impact of this bill. However, it is anticipated that the bill will decrease the need for prison beds to the extent that state prisoners serve concurrent sentences for VOPs or VCCs addressed while imprisoned. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Unserved Arrest Warrants

In some circumstances, a defendant who was sentenced to probation¹ or community control² in one county ("County A") may violate the terms of his supervision and flee the county. The defendant may later commit an unrelated crime in a different county ("County B"), which results in a conviction and sentence for the new offense. The court in County B may order that the defendant's sentence run concurrently³ to any sentence imposed for violating probation ("VOP") or community control ("VCC") in County A.

The sheriff in County A may file a detainer with the correctional institution where the defendant is incarcerated, requesting that the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent.⁴ However, the sheriff in County A is not required to serve or execute an arrest warrant⁵ while the defendant is being held on the detainer.

A detainer is not the equivalent of an arrest and does not trigger a probationer's right to be brought before the court that placed him on probation or community control for a VOP or VCC hearing.⁶ As a result, a defendant may not be sentenced for the VOP or VCC in County A until after he or she has served the prison sentence for the offense committed in County B.

In *Chapman v. State*,⁷ the Fifth District Court of Appeal addressed a similar situation. In that case, the defendant was sentenced in Brevard County in 1996 as a youthful offender to two years in prison, followed by four years of probation.⁸ In 1998, the defendant violated probation and was sentenced to two years of community control, followed by 18 months of probation.⁹ The defendant subsequently violated his community control and fled the county. In 1999, he was arrested on new charges in Bay County for burglary to a structure and principal to a burglary of a conveyance.¹⁰ The defendant entered pleas to the Bay County charges. He was sentenced to consecutive five-year terms for the two burglary cases, but concurrent with any sentence imposed for violating community control ("VCC") in Brevard County.¹¹

¹ Section 948.001(9), F.S., defines "probation" as "a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03." *See also Coulson v. State*, 342 So. 2d 1042, 1042 (Fla. 4th DCA 1977) (noting that the purpose of probation is to rehabilitate an offender); *see Crossin v. State*, 244 So. 2d 142, 145 (Fla. 4th DCA 1971) (explaining, "[t]he underlying purpose of probation is to give [an] individual a second chance to live within the rules of society and the law of the land during which time he can prove that he will thereafter do so and become a useful member of society.").

² Section 948.001(3), F.S., defines "community control" as "a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced."

³ "The word 'concurrent' means 'operating or occurring at the same time.'" *Jones v. State*, 966 So. 2d 319, 326 (Fla. 2007) (citing *Merriam Webster's Collegiate Dictionary* 239 (10th ed. 2001)).

⁴ *Gethers v. State*, 838 So. 2d 504, 507 (Fla. 2003).

⁵ *Id.* (explaining that "[a] warrant is a 'writ directing or authorizing someone to do an act, esp. one directing a law enforcer to make an arrest, a search, or a seizure.'" (citing *Black's Law Dictionary* 1579 (7th ed. 1999)).

⁶ s. 948.06(1)(b)-(1)(c), F.S.

⁷ *Diaz v. State*, 737 So. 2d 1203, 1204 (Fla. 5th DCA 1999).

⁸ *Chapman v. State*, 910 So. 2d 940 (Fla. 5th DCA 2005).

⁹ *Id.* at 941.

¹⁰ *Id.*

¹¹ *Id.*

The defendant sought to have the Brevard County cases resolved by plea or trial, but “Brevard County only placed a detainer; they did not seek to have him arrested and returned for trial.”¹² The defendant filed a petition in the trial court seeking to compel the Brevard County Sheriff’s Office to arrest him by serving the arrest warrant.¹³ The trial court denied the petition, ruling that the defendant “was not entitled to mandamus relief while serving a sentence on a separate charge in a different county for an offense committed while he was on Brevard County community control.”¹⁴

On appeal, the Fifth District explained that there was no mechanism by which the defendant could compel Brevard County to arrest him.¹⁵ The defendant had no personal right to have the arrest warrant executed; rather, the state or governmental entity seeking prosecution is the entity that has a right to the service of the arrest warrant.¹⁶ The Fifth District also noted that a trial court has no ministerial duty to conduct a hearing on an affidavit alleging a VOP. A probationer is only entitled to be heard on a VOP after his arrest and return to the court which granted the probation.¹⁷

Based on the above, there is currently no provision in Florida law for a prisoner to compel an unserved warrant while in prison. The Florida Department of Corrections (“DOC”) estimates that at any given time, there are approximately 20 inmates that have unserved VOP or VCC warrants.¹⁸

Effect of the Bill

The bill creates s. 948.33, F.S., to address unserved arrest warrants for state prisoners. Under the bill:

- A state prisoner who has an unserved VOP or VCC warrant for his or her arrest may file a state prisoner’s notice of unserved warrant in the circuit court of the judicial circuit where the unserved warrant was issued;
- The prisoner must also serve notice on the state attorney of that circuit;
- The circuit court must schedule the notice for a status hearing within 90 days after receipt of the notice; and
- The state prisoner may not be transported to the status hearing.

At the status hearing, the state attorney must inform the court as to whether there is an unserved VOP or VCC warrant for the arrest of the state prisoner. If there is an outstanding warrant, the court must enter an order within 30 days after the status hearing to transport the state prisoner to the county jail of the county that issued the warrant. The court must send the order to the county sheriff for execution.

The DOC states that prisoners who are able to address their warrants for VOPs or VCCs while imprisoned on other charges are likely to receive a concurrent sentence; thereby, reducing the need for prison beds. Additionally, being able to dispose of such warrants before release from prison, may allow the prisoner to participate in transitional and reintegration programs that would otherwise be unavailable when an outstanding warrant exists.¹⁹

The bill has an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Creates s. 948.33, F.S., relating to prosecution for VOP and VCC arrest warrants of state prisoners.

¹² *Id.*

¹³ *Id.* at 940-41.

¹⁴ *Id.* at 941.

¹⁵ *Id.* at 942.

¹⁶ *Id.* at 941-42.

¹⁷ *Id.* at 942.

¹⁸ *2017 Agency Legislative Bill Analysis for HB 1091, Department of Corrections*, at 2, dated Mar. 9, 2017 (on file with the House Criminal Justice Subcommittee).

¹⁹ *Id.*

Section 2. Provides an effective date of July 1, 2017.

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 revenue.
2. Expenditures: The Criminal Justice Impact Conference (“CJIC”) has not met to consider the impact of this bill. However, it is anticipated that the bill will decrease the need for prison beds to the extent that state prisoners serve concurrent sentences for VOPs and VCCs addressed while imprisoned.

The Justice Administration Commission (“JAC”) states that the bill will have no fiscal impact to its agency. Impacts, if any, to the state courts system are unknown at this time.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenue.
2. Expenditures: The bill does not appear to have any impact on state government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill appears to be 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 March 28, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

²⁰ HB 1091 is identical to SB 894. JAC reviewed the Senate version of the bill, and the same analysis is applicable here. *See* JAC Memorandum No. 021-17, dated Feb. 17, 2017 (on file with the House Criminal Justice Subcommittee).

- Requires the circuit court to schedule a status hearing to determine whether a prisoner has an unserved VOP or VCC within 90 days after receiving notice.
- Clarifies that if a warrant for either a VOP or VCC exists, the circuit court must enter an order within 30 days after the status hearing for transport of the prisoner to the county jail of the county that issued the warrant for prosecution of the violation.

This analysis is drafted to the bill as amended by the Criminal Justice Subcommittee.