

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1091 Arrest Warrants for State Prisoners  
**SPONSOR(S):** Criminal Justice Subcommittee and 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	13 Y, 0 N	Smith	Gusky
3) Judiciary Committee	18 Y, 0 N	Merlin	Camechis

### SUMMARY ANALYSIS

CS/HB 1091 creates procedures to enable state prisoners to serve out sentences for violations of probation or community control while in prison for other crimes.<sup>1</sup> If a prisoner has an unserved warrant for arrest issued by another county for a violation of probation, the bill allows the prisoner to petition for a status hearing. At that hearing, a state attorney informs the circuit court if the prisoner does in fact have an unserved warrant for a violation of probation.

If the prisoner has an unserved warrant, the bill provides that the court must order the state attorney to submit an order to send the prisoner to the issuing county's jail. The court must send the order to the local county sheriff to execute the prisoner's transport to the county that issued the arrest warrant.

The Criminal Justice Impact Conference ("CJIC") met on March 29, 2017, and determined the bill would have a negative indeterminate impact on the prison population.

The bill does not appear to have a fiscal impact on local governments.

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

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<sup>1</sup> "Probation" should be read to mean "probation and/or community control" for the remainder of this analysis, as the two mechanisms are treated the same by existing Florida Statutes, caselaw, and the bill.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### *Unserved Arrest Warrants*

In some circumstances, a defendant who is sentenced to probation<sup>2</sup> or community control<sup>3</sup> in one county ("County A") may violate the terms of their 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 concurrently<sup>4</sup> 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.<sup>5</sup> However, the sheriff in County A is not required to serve or execute an arrest warrant<sup>6</sup> while the defendant is held on the detainer.

A detainer is not the equivalent of an arrest and does not trigger a probationer's right to go before the court that placed them on probation or community control for a VOP or VCC hearing.<sup>7</sup> As a result, sentencing of the defendant for the VOP or VCC in County A may not occur until after he or she has served the prison sentence for the offense committed in County B.

In *Chapman v. State*,<sup>8</sup> 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.<sup>9</sup> In 1998, the defendant violated probation and was sentenced to two years of community control, followed by 18 months of probation.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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<sup>2</sup> 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.").

<sup>3</sup> 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."

<sup>4</sup> "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)).

<sup>5</sup> *Gethers v. State*, 838 So. 2d 504, 507 (Fla. 2003).

<sup>6</sup> *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)).

<sup>7</sup> s. 948.06(1)(b)-(1)(c), F.S.

<sup>8</sup> *Diaz v. State*, 737 So. 2d 1203, 1204 (Fla. 5th DCA 1999).

<sup>9</sup> *Chapman v. State*, 910 So. 2d 940 (Fla. 5th DCA 2005).

<sup>10</sup> *Id.* at 941.

<sup>11</sup> *Id.*

<sup>12</sup> *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.”<sup>13</sup> 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.<sup>14</sup> 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.”<sup>15</sup>

On appeal, the Fifth District explained that there was no mechanism by which the defendant could compel Brevard County to arrest him.<sup>16</sup> 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.<sup>17</sup> 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 that granted the probation.<sup>18</sup>

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 (“FDC”) estimates that at any given time, there are approximately 20 inmates that have unserved VOP or VCC warrants.<sup>19</sup>

### **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 FDC 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.<sup>20</sup>

The bill provides 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.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 940-41.

<sup>15</sup> *Id.* at 941.

<sup>16</sup> *Id.* at 942.

<sup>17</sup> *Id.* at 941-42.

<sup>18</sup> *Id.* at 942.

<sup>19</sup> *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).

<sup>20</sup> *Id.*

Section 2. Provides an effective date.

## 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 met on March 29, 2017, and determined the bill would have a negative indeterminate impact on the prison population.<sup>21</sup>

The bill would prevent the need for state custody detainees upon release of inmates from prison, likely reducing the number of prison days for those offenders whose violations are currently disposed of after their prison terms end. The Department of Corrections expects the applicable inmates will more than likely serve a concurrent prison sentence if the unserved violations are handled while in custody. Per FDC, there are approximately 20 inmates with unserved violation of probation or community control warrants at any given time. However, it is unknown how many inmates would initiate the notice to state attorneys in order to begin this process, or the time it would take to deal with these violations.<sup>22</sup>

### 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.

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<sup>21</sup> "Negative Indeterminate" means a reduction in the average daily prison population by an unquantifiable amount.

<sup>22</sup> Department of Economic and Demographic Research, *PCS for HB 1091 – Arrest Warrants for State Prisoners*, "Criminal Justice Impact Conference," Mar. 29, 2017, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCSforHB1091.pdf> (last viewed April 21, 2017).

#### **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:

- 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; and
- 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.