

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 790

INTRODUCER: Appropriations Committee; Criminal Justice Committee; and Senator Brandes

SUBJECT: Probation and Community Control

DATE: April 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
2.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 790 amends s. 948.06, F.S., to address the recent court decision in *Mobley v. State*, 197 So. 3d 572 (4th DCA 2016). The court in *Mobley* held that a warrant issued under s. 901.02, F.S., does not toll an offender's supervision unless the warrant was for a new crime, not just a violation of the conditions of supervision. A probation term is not currently tolled for a technical violation under s. 948.06(1)(f), F.S. This allows the term of probation to expire prior to resolution of any technical violation. The bill removes the reference to s. 901.02, F.S., in s. 948.06(1)(f), F.S., to clarify that a warrant tolling supervision may be issued for a violation of the terms and conditions of the supervision, and that a crime need not be committed for tolling to occur.

This bill revises various sections of ch. 948, F.S., to clarify and update provisions in order to conform to current law and current practices of the Department of Corrections (department).

This bill is not expected to impact state or local government revenues or expenditures.

The bill is effective July 1, 2017, except for Section 4 of the bill, which is effective October 1, 2017 (specifies the ineligibility for administrative probation for certain offenders).

II. Present Situation:

Probation

The Department of Corrections supervises more than 168,000 adult offenders. These offenders are monitored and supervised by probation officers located in 130 probation offices throughout Florida. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, administrative probation, drug offender probation, sex offender probation, and community control.¹

Issuance of Arrest Warrants

Section 901.02(1), F.S., requires a judge to sign and issue an arrest warrant if the judge decides that probable cause exists to issue the arrest warrant for any crime committed within the judge's jurisdiction.

Section 901.02(2), F.S., provides that the court may issue a warrant for the defendant's arrest when all of the following circumstances apply:

- A complaint has been filed charging the commission of a misdemeanor only.
- The summons issued to the defendant has been returned unserved.
- The judge finds that probable cause exists to issue the arrest warrant.

A judge may electronically sign² an arrest warrant if the judge determines that the complaint:

- Bears the affiant's signature or electronic signature if the complaint was submitted electronically.
- Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths.
- If submitted electronically, is submitted by reliable electronic means.

Arrest for Violation of Probation or Community Control

During probation or community control, under s. 948.06, F.S., if a person violates the terms of his or her probation or community, then any law enforcement officer or parole or probation officer can arrest the person. The arrest may be made with or without a warrant. A judge can also issue a warrant for the person's arrest, or the committing trial court judge can issue a notice to appear, depending on the type of violation.

Until the court enters a ruling, under s. 948.06(1)(f), F.S., the person's probation period is tolled upon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant under s. 901.02, F.S., or a warrantless arrest or a notice to appear under s. 948.06, F.S.

¹ Florida Department of Corrections, *Introduction to Community Corrections*, available at <http://www.dc.state.fl.us/facilities/comcor/> (last visited March 7, 2017).

² Section 933.40(1)(d), F.S., defines "electronic signature" as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Mobley v. State

In *Mobley v. State*, 197 So. 3d 572 (4th DCA 2016), the court held that a warrant purportedly issued under s. 901.02, F.S., does not toll an offender's supervision unless the warrant was for a new crime, not just a violation of the conditions of supervision.

Facts in the Case

In the case, Mr. Mobley had pled no contest to various charges stemming from two cases and was placed on eighteen months' probation on March 7, 2011. The probation was set to expire on September 7, 2012. On August 9, 2012, a probation officer filed affidavits in both cases alleging that Mr. Mobley violated his probation by failing to make both restitution payments and a drug testing fee payment. The same day, the trial court issued warrants to arrest him based on those affidavits.

Mr. Mobley's probation was extended by two years for the violations in the affidavits, but this occurred twenty days after his probation was scheduled to expire. After this extension, Mr. Mobley led police on a high-speed motorcycle chase and was again charged with violation of probation for various reasons including the chase.

After a hearing on his violation of probation relating to the chase, the trial court found that he violated his probation and sentenced him to 332.95 months in prison based on his original offenses from March 2011.

Mr. Mobley argued that because his probation expired on September 7, 2012, that its subsequent extension and later revocation must be reversed because the trial court lacked subject matter jurisdiction.³

Analysis

The court stated that s. 948.06(1)(f), F.S., is clear that a warrant under s. 901.02, F.S., is required in order for the probationary period to be tolled (except when one of the other two alternatives are applicable). The court further stated that s. 901.02, F.S., requires that the warrant be for a "crime." In this case, the warrants were for violations of probation based on the failure to make restitution payments and a payment for drug testing which are not crimes. The court found that the warrants issued under s. 901.02, F.S., were never tolled.

The court reversed and remanded the case to the trial court. The state subsequently filed a Motion to Certify Question of Great Public Importance. The Fourth District Court of Appeal granted the motion and certified the following question to the Florida Supreme Court:

IN A SITUATION WHERE THERE IS NO WARRANTLESS
ARREST OR NOTICE TO APPEAR, CAN A WARRANT THAT DOES
NOT ALLEGE A PROBATIONER COMMITTED A NEW CRIME BE

³ This portion of the analysis is adapted from *Mobley v. State*, 197 So. 3d 572 at 573 (4th DCA 2016).

CONSIDERED A WARRANT ISSUED UNDER SECTION 901.02 OF THE FLORIDA STATUTES FOR THE PURPOSE OF TOLLING A PROBATIONARY PERIOD PURSUANT TO SECTION 948.06(1)(f)⁴

The Florida Supreme Court declined the certificate for question.⁵

III. Effect of Proposed Changes:

Issuance of Arrest Warrants

Section 9 amends s. 948.06(1)(f), F.S., to delete the reference to s. 901.02, F.S., related to the issuance of a warrant based on an affidavit alleging a violation of probation or community control. According to the department, this change will correct the statutory deficiency identified in *Mobley*. By removing the reference to s. 901.02, F.S., in s. 948.06(1)(f), F.S., it clarifies that a warrant issued for a violation of the terms and conditions of the supervision tolls the person's probation period and that a crime need not be committed for tolling to occur.

Under current law, the chief judge of a judicial circuit may direct the department to use a notification letter of a technical violation in lieu of a violation report, affidavit, and warrant when the alleged violation is not a new felony or misdemeanor offense. The bill also amends s. 948.06(1)(g), F.S., to allow the court to direct the department to use a notification letter in lieu of a notice to appear.

Administrative Probation

Administrative probation is “a form of non-contact supervision in which an offender who represents a low risk of harm to the community may be placed on non-reporting status until expiration of the term of supervision.”⁶

Section 1 amends s. 948.001, F.S., to update the definition of “administrative probation” and provide a cross-reference to s. 948.013, F.S., which provides the requirements to administrative probation.

Section 4 amends s. 948.013, F.S., to specify that the current provisions of ineligibility for administrative probation for certain offenders apply to persons whose crimes were committed after July 1, 1998, but before October 1, 2017. It further provides that a person is ineligible for administrative probation if he or she is convicted of any sexual felony offense listed in ss. 775.21 and 943.0435, F.S., committed on or after July 1, 2017. This change eliminates the need to update the list when new offenses are added. This change excludes all sexual predators and offenders from being eligible for administrative probation.⁷

⁴ *Mobley v. State*, 192 So. 3d 622 (4th DCA 2016).

⁵ *State v. Mobley*, SC16-936, 2016 Fla. LEXIS 1174 (Fla. 2016).

⁶ Department of Corrections, *Community Supervision Definitions*, available at <http://www.dc.state.fl.us/facilities/comcorinfo/definitions.html> (last visited March 8, 2017).

⁷ Department of Corrections, *2017 Agency Legislative Bill Analysis: SB 790*, February 12, 2017.

Uniform Order of Supervision

The department, in consultation with the Office of State Courts Administrator, developed and disseminated to the courts uniform order of supervision forms in 2009.⁸ **Section 2** clarifies that the uniform order of supervision forms are *revised* each year and *made available* to the courts in s. 948.01(1)(b), F.S.

Addiction Recovery Supervision

Addiction recovery supervision is “mandatory post-prison supervision for offenders released from a state correctional facility who have a history of substance abuse or addiction or have participated in any drug treatment, and have not been convicted of a disqualifying offense.”⁹ **Section 3** amends s. 948.012, F.S., to include a reference to s. 944.4731(2)(b), F.S.,¹⁰ clarifying that inmates released to addiction recovery supervision who also have probation or community control to follow release must serve the addiction recovery supervision period first.

Conditions of Probation or Community Control

Community Service

Section 6 amends s. 948.031, F.S., to change the term “public service” to the term “community service.” The department states that the purpose of the change is to emphasize that the work is done as a service to the community.¹¹

Residential Treatment Programs

Section 7 updates s. 948.035(3), F.S., to reflect the current process for offenders to be referred and evaluated for residential treatment programs. Under the bill, before admission to a treatment facility or center, a qualified practitioner must provide an individual assessment and recommendation on appropriate treatment.

Education and Learning

Section 8 amends s. 947.037, F.S., to grant a court discretion to order an offender without a high school diploma or equivalent, or who is illiterate, to make a good faith effort toward completion of an adult education program as a condition of probation. Currently, the law requires the court to make such an order.

⁸ Chapter 2009-63, F.S. At the time, there was no statewide format for the order of supervision; the department had developed a uniform order that a majority of circuits were using. Florida Senate, *Bill Analysis SB 1722*, April 6, 2009.

⁹ Florida Commission on Offender Review, *Release Types*, available at <https://www.fcor.state.fl.us/postrelease.shtml> (last visited March 8, 2017).

¹⁰ “If an offender has received a term of probation or community control to be served after release from incarceration, the period of probation or community control may not be substituted for addiction-recovery supervision and shall follow the term of addiction-recovery supervision.” Section 944.4731(2)(b), F.S.

¹¹ Department of Corrections, *2017 Agency Legislative Bill Analysis: SB 790*, February 12, 2017.

Payment for Supervision and Other Obligations

Section 10 amends s. 948.09, F.S., to:

- Revise the catch line to accurately reflect the statute's purpose.
- Remove references to specific types of supervision that are under ch. 948, F.S., to instead refer generally to supervision under ch. 948, F.S., in subsection (1).
- Simplify references to supervision in subsection (3) and updates references to the Secretary of the department to accurately reflect the responsible person or action.
- Repeal subsection (4) related to misdemeanor supervision payments. The department stated that this is obsolete.¹²

Home Confinement

Section 11 revises s. 948.10, F.S., to clarify that community control is the department's "home confinement" program.

Currently, a court or the Florida Commission on Offender Review can order an offender to community control instead of incarceration. This is limited to certain individuals:

- Probation violators charged with technical violations or misdemeanors;
- Parole violators charged with technical violations or misdemeanors; and
- Individuals convicted of felonies who, due to their backgrounds or the seriousness of the offenses, would not be placed on regular probation.

This section authorizes the use of community control for *any* new law violations, not just misdemeanors. The department states that this would give the courts an alternative to jail or prison for offenders charged with new law violations.¹³

This section also increases the community control case size ratio from an officer supervising 25 cases to an officer supervising 30 cases. The department states that this increase is due to the amount of time an officer currently requires with these types of cases in supervising the offender.¹⁴

This section repeals a requirement of the department to commit at least ten percent of field staff and supporting resources on the community control program. The department states that "the deletion of the listed percentage of resources is proposed because sentencing practices are not universal in all areas of the state and some courts sentence offenders to community control at different rates in each circuit." Additionally, the statutory case size ratio limits caseloads for staff and in areas with staffing shortages, these functions are completed by multiple staffing levels, not just field staff.¹⁵

¹² *Id.*

¹³ *Id.*

¹⁴ E-mail exchange between Department of Corrections Staff and Staff of the Criminal Justice Committee, January 4, 2017.

¹⁵ *Id.*

This section repeals an obsolete annual report about the community control program and “the department’s specific efforts to protect the public from offenders placed on community control.” The department states that this is an obsolete report required by the “Howard E. Futch Community Safety Act,” the provision of which was repealed in 2008.¹⁶ It is likely that this annual report should also have been repealed at that time. The department discontinued this section of its annual report in 2008 but has put practices in place to ensure future compliance.¹⁷

Electronic Monitoring

Currently, s. 948.11(1), F.S., states that the department *may* electronically monitor an offender sentenced to community control when the court has imposed electronic monitoring as a condition of community control. **Section 13** corrects this provision to require the department to monitor electronically an offender as ordered by the court.

Additionally, the **section 13**:¹⁸

- Clarifies that electronic monitoring may be used for offenders placed under *supervision*, not just community control. The department states that it is used as a tool to enhance field supervision and surveillance.
- Allows a court to order electronic monitoring for violations of probation, as an alternative sanction.
- Clarifies that any probation officer investigates electronic monitoring alerts for offenders monitored by the department, not just community control officers.

Obsolete References

Sections 1, 5, 9, and 11 amends ss. 948.001, 948.03, 948.06, and 948.10, F.S., respectively, to update references to “parole” officers. The department states that the term is obsolete.¹⁹

Sections 1 and 9 also update references to probation officers to be consistent throughout the chapter by using the uniform term “probation officer” rather than “correctional probation officer” or “supervisor.”

Community residential drug punishment centers were repealed in 2010.²⁰ The staff analysis stated that no person was ever sentenced to a center; the centers were never funded; and no centers existed.²¹ The bill repeals the definition for “community residential drug treatment center” in s. 948.001, F.S., (Section 1), and similar provisions in ss. 948.03(2), 948.035(1)(b) and (3), and 948.101(2), F.S., (Sections 5, 7, and 12).

Section 14 amends s. 948.15, F.S., to remove an obsolete reference to American Correctional Association standards established in 1991 for staff qualifications and criminal background checks for staff of certain private providers.

¹⁶ See ch. 2008-250, L.O.F.

¹⁷ E-mail exchange between Department of Corrections Staff and Staff of the Criminal Justice Committee, January 4, 2017.

¹⁸ Department of Corrections, *2017 Agency Legislative Bill Analysis: SB 790*, February 12, 2017.

¹⁹ Department of Corrections, *2017 Agency Legislative Bill Analysis: SB 790*, February 12, 2017.

²⁰ Chapter 2010-113, L.O.F.

²¹ Florida Senate, *Bill Analysis CS/SB 2350*, April 9, 2010, page 2.

Section 15 repeals s. 948.50, F.S., which states that “this act may be cited as the ‘Community Corrections Partnership Act.’”

Reenactments

Sections 16, 17, 18, and 19 reenact ss. 921.187(1)(n), 947.1405(7)(b), 947.1747, and 948.01(3), F.S., to incorporate changes made in other sections of the bill.

The bill is effective July 1, 2017, except for Section 4 of the bill, which is effective October 1, 2017 (specifies the ineligibility for administrative probation for certain offenders).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 790 is not expected to impact state or local government revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 948.001, 948.01, 948.012, 948.013, 948.03, 948.031, 948.035, 948.037, 948.06, 948.09, 948.10, 948.101, 948.11, 948.15, 948.50, 921.187, 947.1405, and 947.1747.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 5, 2017:

The committee substitute:

- In Section 4 of the bill, changes the date on which a crime was committed from July 1, 2017, to October 1, 2017, that delineates ineligibility for administrative probation for certain offenders (those whose crimes were committed after July 1, 1998, but before October 1, 2017, and those whose crimes are committed on or after October 1, 2017).
- Makes Section 4 effective on October 1, 2017.

CS by Criminal Justice on March 13, 2017:

The CS:

- No longer amends language of s. 948.01(1)(a) and (5), F.S., that prohibits private entities from providing probationary or supervision services to misdemeanor offenders.
- Amends s. 948.013, F.S., making a person ineligible for administrative probation if he or she was convicted of any sexual felony offense listed in ss. 775.21 and 943.0435, F.S., committed on or after July 1, 2017, eliminating the need to update the list when new offenses are added. This change would exclude all sexual predators and offenders from being eligible for administrative probation.

B. Amendments:

None.