

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 885 Arrest Warrants for State Prisoners

SPONSOR(S): Plakon

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 0 N	Painter	Sumner
2) Justice Appropriations Subcommittee	10 Y, 0 N	Smith	Gusky
3) Judiciary Committee	19 Y, 0 N	Painter	Poche

SUMMARY ANALYSIS

When an individual is serving probation or community control in one county, and is then arrested and incarcerated for committing a new offense in another county, the first county will likely issue an arrest warrant for a violation of probation or community control. Sheriffs have no duty or obligation to execute arrest warrants in outlying counties. Therefore, a county may issue a detainer to the county where the incarcerated individual committed the new offense. A detainer instructs the holding county to either:

- Hold the prisoner for the issuing county; or
- Inform the issuing county when the prisoner is about to be released.

The Florida Supreme Court has ruled that a detainer generally does not result in accrual of jail or prison time served for the probation violation because a detainer is not the same as an arrest warrant. Furthermore, the Second District Court of Appeal has ruled that a trial court has no duty to conduct a hearing on a warrant for a probation violation, especially when the defendant is not imprisoned in the same county as the court. As a result, a prisoner can leave prison after serving the entirety of his or her sentence for the new offense, and then be arrested for violating his or her probation in another county.

HB 885 creates a process for a state prisoner to serve out a sentence for a violation of probation or community control while in prison for another crime. If a prisoner has an unserved warrant issued by another county for a violation of probation or community control, the bill allows the prisoner to petition for a status hearing. At that hearing, a state attorney will advise the circuit court if the prisoner does in fact have an unserved warrant for a violation of probation or community control.

If the prisoner has an unserved warrant, the bill requires the court to enter an order to transport the prisoner to the issuing county's jail. The court must send the order to the issuing county's sheriff to transport the prisoner to the issuing county in order to resolve the violation of probation.

The Criminal Justice Impact Conference (CJIC) considered an identical version of this bill on March 29, 2017, and determined that it will decrease the need for prison beds by an unquantifiable amount. The bill would have an insignificant fiscal impact on local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Unserved Arrest Warrants

When a defendant is sentenced to probation¹ or community control² at the resolution of a criminal case, a standard condition of probation is that the defendant live without violating any law.³ A situation may occur where an individual is serving probation in one county and, during that time, is arrested in another county for a new offense. The individual's arrest or imprisonment in the other county may also violate his or her probation or community control.⁴

Upon the filing of an affidavit alleging a violation of probation (VOP) and following the issuance of a warrant for such violation, a warrantless arrest, or a notice to appear, the period of supervision is tolled until the court enters a ruling on the VOP.⁵ The probation officer is permitted to continue to supervise any offender who remains available to the officer for supervision until the supervision expires or until the court revokes or terminates the supervision, whichever comes first.⁶

When an offender's VOP stems from the commission of a new violation of law, two criminal proceedings commence. The first is the proceeding involving the new offense that was committed, which is initiated in the county where the new law violation occurred. The second is the VOP proceeding, which is initiated in the county where a VOP arrest warrant is issued.⁷ A situation may occur in which a probationer has committed and been convicted of a new offense and sentenced to state prison, during which time, the VOP proceeding is still pending. The Department of Corrections estimates that, at any given time, approximately 20 state prisoners have unserved arrest warrants for VOP.⁸

A sheriff has a duty and obligation to execute an arrest warrant in his or her county, but the obligation does not extend to outlying counties.⁹ Rather than execute the issued arrest warrant by serving the individual in prison for a violation of probation, a county may issue a detainer to the county where the individual is incarcerated for a new offense. A detainer instructs the holding county to either:

- Hold the prisoner for the issuing county; or
- Notify the issuing county when the prisoner's release is imminent.¹⁰

The Florida Supreme Court has ruled that a detainer does not result in accrual of time served for the probation violation because a detainer is not the same as an arrest warrant.¹¹ "Generally, a defendant is not entitled to jail credit for time served until the arrest warrant is served."¹²

¹ S. 948.001(8), F.S., defines "probation" as "a form of community supervision requiring specified contacts with probation officers and other terms and conditions as provided in s. 948.03."

² S. 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 specified sanctions are imposed and enforced."

³ S. 948.03(1)(e), F.S.

⁴ "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 the caselaw, the existing Florida Statutes, and this bill.

⁵ S. 948.06(1)(f), F.S.

⁶ Id.

⁷ Pursuant to Fla. R. Crim. P. 3.121.

⁸ Email from Department of Corrections, January 9, 2018 (on file with Judiciary Committee).

⁹ S. 30.15(1)(b), F.S.

¹⁰ *Bonner v. State*, 866 So. 2d 163 (Fla. 5th DCA 2004).

¹¹ *Gethers v. State*, 838 So. 2d 504 (Fla. 2003).

¹² *Rios v. State*, 87 So. 3d 822 (Fla. 2d DCA 2012) (citing *Gethers v. State*, 838 So. 2d 504 (Fla. 2003)).

A prisoner is currently unable to resolve an outstanding VOP in another county while serving a prison sentence on an unrelated offense because a court has no ministerial duty to conduct a hearing on an affidavit alleging a VOP.¹³ A probationer is entitled to be heard on a VOP only after his or her arrest and return to the court that granted the probation.¹⁴ A prisoner will often serve the entirety of a prison sentence, and when it is time to be released, the prisoner will be transported to the issuing county to then be served on the arrest warrant for VOP that will start the process of trying to resolve that case.

Effect of Proposed Changes

HB 885 creates a process to resolve a prisoner's unserved arrest warrant for a probation violation while incarcerated for an unrelated offense committed in another county. A prisoner may file a notice of unserved warrant in the circuit court that issued the probation warrant, and must notify the state attorney in that county. The court will then schedule a status hearing within 90 days after receipt of notice, where the state attorney informs the judge whether the prisoner has an unserved warrant for a probation violation. If there is such a warrant, the judge must enter a transport order within 30 days after the status hearing for the prisoner to be transported to the county jail of the county that issued the warrant. The transport order is sent to the sheriff of the issuing county for execution.

The procedure will allow a prisoner to possibly resolve a VOP or a violation of community control case concurrent to the prison sentence the prisoner is already serving on an unrelated offense. The prisoner would be able to petition the court for a hearing and be transported to the issuing county to be served with the outstanding arrest warrant. At that time, the prisoner would begin receiving jail credit for any time served, concurrent with the prison sentence, and therefore the VOP case may resolve with a concurrent sentence to the prison time the defendant is already serving. This would eliminate the need to transport prisoners to counties that issue the unserved warrants at the conclusion of that prisoner's sentence and may result in more efficient resolutions of VOP cases. Resolution of the open warrant may also allow an inmate to participate in transitional and reintegration programs that may otherwise be unavailable to him or her due to the open warrant.¹⁵

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates s. 948.33, F.S., relating to prosecution for violation of probation and community control arrest warrants of state prisoners.

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered an identical version of this bill on March 29, 2017, and determined that it will decrease the need for prison beds by an unquantifiable amount.

¹³ *Chapman v. State*, 910 So. 2d 940 (Fla. 5th DCA 2005).

¹⁴ *Id.* citing *Bonner v. State*, 866 So. 2d 163 (Fla. 5th DCA 2004).

¹⁵ Department of Corrections, Agency analysis, pg. 2, February 6, 2018.

The bill would prevent the need for state custody detainers 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 applicable inmates will more than likely serve a concurrent prison sentence if the unserved violations are handled while in custody. The department estimates there are approximately 20 inmates with an unserved VOP or community control warrant at any given time. It is unknown how many inmates will initiate the notice to state attorneys in order to begin this process, or the time it will take to handle these violations.¹⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires the county sheriff to execute the transport order if an unserved violation warrant exists. The increase in transportation expenses incurred by the counties is expected to be insignificant, since the provisions of this bill would be applicable to approximately 20 inmates statewide at any given time.

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. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁶ 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 February 20, 2018).