

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 859 Administrative Probation

SPONSOR(S): Latvala

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Bruno	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Administrative probation is a form of nonreporting supervision available to low-risk offenders upon successful completion of half of their probationary term. Only the Department of Corrections (DOC) has the authority to transfer a probationer to administrative probation. Certain offenders are ineligible for conversion to administrative probation, including those on probation for enumerated sexual offenses and those qualifying as sexual predators. In *State v. Nazario*, the Fourth District Court of Appeal explicitly held that a circuit court did not have the authority to impose administrative probation as a sentence because the definition of administrative probation specifies that it is only available upon transfer by DOC.

HB 859 amends the definition of administrative probation to allow a court to order such supervision. By changing the definition, the bill allows a court to sentence a person to administrative probation initially or to convert another form of supervision to administrative probation upon an offender's motion. DOC retains its current authority to transfer a qualifying probationer to administrative probation.

The bill may have an indeterminate positive fiscal impact on state and local governments.

The bill has an effective date of October 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

At sentencing for a criminal conviction, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.¹ Probation is a form of community supervision requiring specified contacts with probation officers and other terms and conditions.² Community control is a more intensive form of supervision involving an individualized program which restricts the offender's movement within the community, home, or residential placement.³ Several standard conditions of probation or community control apply automatically, including requirements to report to a probation officer as directed and to live without violating any law.⁴ The court may also impose special conditions, such as community service hours, regular drug or alcohol testing, no contact orders, and treatment programs.⁵

Administrative probation is a form of nonreporting supervision available to low-risk offenders upon successful completion of half of their probationary term.⁶ Only the Department of Corrections (DOC) has the authority to transfer a probationer to administrative probation.⁷ DOC may develop procedures for transferring probationers to administrative probation.⁸ Certain offenders are ineligible for conversion to administrative probation, including those on probation for enumerated sexual offenses or offenses involving minors and those qualifying as sexual predators.⁹ In *State v. Nazario*, the Fourth District Court of Appeal explicitly held that a circuit court did not have the authority to impose administrative probation as a sentence because the definition of administrative probation specifies that it is only available upon transfer by DOC.¹⁰

Effect of Proposed Changes

HB 859 amends the definition of administrative probation to allow a court to order this form of supervision. By changing the definition, the bill allows a court to sentence a person to administrative probation initially or to convert another form of supervision to administrative probation upon an offender's motion. DOC retains its current authority to transfer a qualifying probationer to administrative probation.

B. SECTION DIRECTORY:

Section 1: Amends s. 948.001, F.S., relating to definitions.

Section 2: Amends s. 948.013, F.S., relating to administrative probation.

Section 3: Provides an effective date of October 1, 2019.

¹ S. 948.01, F.S.

² S. 948.001(8), F.S.

³ S. 948.001(3), F.S.

⁴ S. 948.03(1), F.S.

⁵ S. 948.03(2), F.S.

⁶ S. 948.01(1), F.S.

⁷ *Id.*; *State v. Nazario*, 100 So.3d 1246 (Fla. 4th DCA 2012).

⁸ S. 948.013(1), F.S.

⁹ S. 948.013(2), F.S.

¹⁰ *Nazario*, 100 So.3d at 1246.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may reduce costs for DOC by allowing more offenders to participate in administrative probation by court-order. The bill may also decrease the number of offenders subject to probation violation sanctions for failing to report to the probation officer.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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