

1 A bill to be entitled

2 An act relating to probation violations; amending s.  
3 948.06, F.S.; requiring a probation officer to  
4 determine whether a probationer or offender on  
5 community control may remain in the program after  
6 committing a technical violation; defining the term  
7 "technical violation"; deleting existing provisions  
8 concerning an alternative sanctioning program;  
9 providing for low-risk and moderate-risk level  
10 violations; establishing permissible sanctions for  
11 low-risk and moderate-risk violations of probation  
12 under the program; establishing eligibility criteria;  
13 authorizing a probationer who allegedly committed a  
14 technical violation to waive participation in or elect  
15 to participate in the program, admit to the violation,  
16 agree to comply with the recommended sanction, and  
17 agree to waive certain rights; requiring a probation  
18 officer to submit the recommended sanction and certain  
19 documentation to the court if the probationer admits  
20 to committing the violation; authorizing the court to  
21 impose the recommended sanction or direct the  
22 department to submit a violation report, affidavit,  
23 and warrant to the court; specifying that a  
24 probationer's participation in the program is  
25 voluntary; authorizing a probation officer to submit a

26 violation report, affidavit, and warrant to the court  
 27 in certain circumstances; requiring each judicial  
 28 circuit to establish an alternative sanctioning  
 29 program; providing an effective date.

30

31 Be It Enacted by the Legislature of the State of Florida:

32

33 Section 1. Paragraphs (c) through (g) of subsection (1) of  
 34 section 948.06, Florida Statutes, are redesignated as paragraphs  
 35 (d) through (h) respectively, a new paragraph (c) is added to  
 36 that subsection, present paragraph (h) of that subsection is  
 37 amended, paragraphs (f) through (j) of subsection (2) of that  
 38 section are redesignated as paragraphs (g) through (k),  
 39 respectively, a new paragraph (f) is added to that subsection,  
 40 and subsection (9) is added to that section, to read:

41 948.06 Violation of probation or community control;  
 42 revocation; modification; continuance; failure to pay  
 43 restitution or cost of supervision.—

44 (1)

45 (c) If a probationer or offender on community control  
 46 commits a technical violation, the probation officer shall  
 47 determine whether he or she is eligible for the alternative  
 48 sanctioning program under subsection (9). If the probationer or  
 49 offender on community control is eligible, the probation officer  
 50 may proceed with the alternative sanctioning program in lieu of

51 filing an affidavit of violation with the court. For purposes of  
52 this section, the term "technical violation" means an alleged  
53 violation of supervision that is not a new felony offense,  
54 misdemeanor offense, or criminal traffic offense.

55 ~~(h)1. The chief judge of each judicial circuit, in~~  
56 ~~consultation with the state attorney, the public defender, and~~  
57 ~~the department, may establish an alternative sanctioning program~~  
58 ~~in which the department, after receiving court approval, may~~  
59 ~~enforce specified sanctions for certain technical violations of~~  
60 ~~supervision. For purposes of this paragraph, the term "technical~~  
61 ~~violation" means any alleged violation of supervision that is~~  
62 ~~not a new felony offense, misdemeanor offense, or criminal~~  
63 ~~traffic offense.~~

64 ~~2. To establish an alternative sanctioning program, the~~  
65 ~~chief judge must issue an administrative order specifying:~~

66 ~~a. Eligibility criteria.~~

67 ~~b. The technical violations that are eligible for the~~  
68 ~~program.~~

69 ~~c. The sanctions that may be recommended by a probation~~  
70 ~~officer for each technical violation.~~

71 ~~d. The process for reporting technical violations through~~  
72 ~~the alternative sanctioning program, including approved forms.~~

73 ~~3. If an offender is alleged to have committed a technical~~  
74 ~~violation of supervision that is eligible for the program, the~~  
75 ~~offender may:~~

76           ~~a. Waive participation in the alternative sanctioning~~  
77 ~~program, in which case the probation officer may submit a~~  
78 ~~violation report, affidavit, and warrant to the court in~~  
79 ~~accordance with this section; or~~

80           ~~b. Elect to participate in the alternative sanctioning~~  
81 ~~program after receiving written notice of an alleged technical~~  
82 ~~violation and a disclosure of the evidence against the offender,~~  
83 ~~admit to the technical violation, agree to comply with the~~  
84 ~~probation officer's recommended sanction if subsequently ordered~~  
85 ~~by the court, and agree to waive the right to:~~

86           ~~(I) Be represented by legal counsel.~~

87           ~~(II) Require the state to prove his or her guilt before a~~  
88 ~~neutral and detached hearing body.~~

89           ~~(III) Subpoena witnesses and present to a judge evidence~~  
90 ~~in his or her defense.~~

91           ~~(IV) Confront and cross-examine adverse witnesses.~~

92           ~~(V) Receive a written statement from a factfinder as to~~  
93 ~~the evidence relied on and the reasons for the sanction imposed.~~

94           ~~4. If the offender admits to committing the technical~~  
95 ~~violation and agrees with the probation officer's recommended~~  
96 ~~sanction, the probation officer must, before imposing the~~  
97 ~~sanction, submit the recommended sanction to the court as well~~  
98 ~~as documentation reflecting the offender's admission to the~~  
99 ~~technical violation and agreement with the recommended sanction.~~

100           ~~5. The court may impose the recommended sanction or may~~

101 ~~direct the department to submit a violation report, affidavit,~~  
102 ~~and warrant to the court in accordance with this section.~~

103 ~~6. An offender's participation in an alternative~~  
104 ~~sanctioning program is voluntary. The offender may elect to~~  
105 ~~waive or discontinue participation in an alternative sanctioning~~  
106 ~~program at any time before the issuance of a court order~~  
107 ~~imposing the recommended sanction.~~

108 ~~7. If an offender waives or discontinues participation in~~  
109 ~~an alternative sanctioning program, the probation officer may~~  
110 ~~submit a violation report, affidavit, and warrant to the court~~  
111 ~~in accordance with this section. The offender's prior admission~~  
112 ~~to the technical violation may not be used as evidence in~~  
113 ~~subsequent proceedings.~~

114 (2)

115 (f)1. Except as provided in subparagraph 3., the court  
116 must modify or continue a probationary term upon finding a  
117 probationer in violation under the following circumstances:

118 a. The term of supervision is probation.

119 b. The probationer does not qualify as a violent felony  
120 offender of special concern, as defined in paragraph (8) (b).

121 c. The violation is a low-risk technical violation, as  
122 provided in paragraph (9) (b).

123 d. The court has not previously found the probationer in  
124 violation of his or her probation pursuant to a filed violation  
125 of probation affidavit during the current term of supervision. A

126 probationer who has successfully completed sanctions through the  
 127 alternative sanctioning program is eligible for mandatory  
 128 modification or continuation of his or her probation.

129 2. Upon modifying probation under subparagraph 1., the  
 130 court may include in the sentence a maximum of 90 days in county  
 131 jail as a special condition of probation.

132 3. Notwithstanding s. 921.0024, if a probationer has less  
 133 than 90 days of supervision remaining on his or her term of  
 134 probation and meets the criteria for mandatory modification or  
 135 continuation in subparagraph 1., the court may revoke probation  
 136 and sentence the probationer to a maximum of 90 days in county  
 137 jail.

138 (9) (a) For a first or second low-risk violation, as  
 139 provided in paragraph (b), within the current term of  
 140 supervision, a probation officer may offer an eligible  
 141 probationer one or more of the following as an alternative  
 142 sanction:

- 143 1. Up to 5 days in the county jail.
- 144 2. Up to 50 additional community service hours.
- 145 3. Counseling or treatment.
- 146 4. Support group attendance.
- 147 5. Drug testing.
- 148 6. Loss of travel or other privileges.
- 149 7. Curfew up to 30 days.
- 150 8. House arrest up to 30 days.

151        9. Any other sanction as determined by administrative  
152 order of the chief judge of the circuit.

153        (b) When committed by a probationer, a low-risk violation  
154 includes any of the following:

155            1. Positive drug or alcohol test result.

156            2. Failure to report to the probation office.

157            3. Failure to report a change in address or other required  
158 information.

159            4. Failure to attend a required class, treatment or  
160 counseling session, or meeting.

161            5. Failure to submit to a drug or alcohol test.

162            6. A violation of curfew.

163            7. Failure to meet a monthly quota on any required  
164 probation condition, including, but not limited to, making  
165 restitution payments, payment of court costs, and completing  
166 community service hours.

167            8. Leaving the county without permission.

168            9. Failure to report a change in employment.

169            10. Associating with a person engaged in criminal  
170 activity.

171            11. Any other violation as determined by administrative  
172 order of the chief judge of the circuit.

173        (c) For a first time moderate-risk violation, as provided  
174 in paragraph (d), within the current term of supervision, a  
175 probation officer, with supervisor approval, may offer an

176 eligible probationer or offender on community control one or  
 177 more of the following as an alternative sanction:

- 178 1. Up to 21 days in the county jail.
- 179 2. Curfew for up to 90 days.
- 180 3. House arrest for up to 90 days.
- 181 4. Electronic monitoring for up to 90 days.
- 182 5. Residential treatment for up to 90 days.
- 183 6. Any other sanction available for a low-risk violation.
- 184 7. Any other sanction as determined by administrative  
 185 order of the chief judge of the circuit.

186 (d) A moderate-risk violation includes any of the  
 187 following:

- 188 1. A violation listed under paragraph (b) when committed  
 189 by an offender on community control;
- 190 2. Failure to remain at an approved residence by an  
 191 offender on community control;
- 192 3. A third violation listed under paragraph (b) by a  
 193 probationer within the current term of supervision; or
- 194 4. Any other violation as determined by administrative  
 195 order of the chief judge of the circuit.

196 (e) A probationer or offender on community control is not  
 197 eligible for an alternative sanction if:

- 198 1. He or she is a violent felony offender of special  
 199 concern, as provided in paragraph (8) (b).
- 200 2. The violation is a felony, misdemeanor, or criminal



201 traffic offense.

202 3. The violation is absconding.

203 4. The violation is for a failure to comply with a no-  
204 contact or stay-away order.

205 5. The violation is not identified as low-risk or  
206 moderate-risk under this paragraph or by administrative order.

207 6. He or she has a prior moderate-risk level violation  
208 during the current term of supervision.

209 7. He or she has three or more prior low-risk level  
210 violations during the same term of supervision.

211 8. The term of supervision is scheduled to terminate in  
212 less than 90 days.

213 9. The terms of the sentence prohibit alternative  
214 sanctioning.

215 (f) If a probationer or offender on community control is  
216 eligible for the alternative sanctioning program, he or she may:

217 1. Waive participation in the program, in which case the  
218 probation officer may submit a violation report, affidavit, and  
219 warrant to the court; or

220 2. Elect to participate in the program after receiving  
221 written notice of an alleged technical violation and disclosure  
222 of the evidence against him or her, admit to the technical  
223 violation, agree to comply with the probation officer's  
224 recommended sanction if subsequently ordered by the court, and  
225 agree to waive the right to:

- 226        a. Be represented by legal counsel.
- 227        b. Require the state to prove his or her guilt before a  
 228 neutral and detached hearing body.
- 229        c. Subpoena witnesses and present to a judge evidence in  
 230 his or her defense.
- 231        d. Confront and cross-examine adverse witnesses.
- 232        e. Receive a written statement from a judge as to the  
 233 evidence relied on and the reasons for the sanction imposed.
- 234        (g) If the probationer or offender on community control  
 235 admits to committing the technical violation and agrees with the  
 236 probation officer's recommended sanction, the probation officer  
 237 must, before imposing the sanction, submit the recommended  
 238 sanction to the court with documentation reflecting the  
 239 probationer's admission to the technical violation and agreement  
 240 with the recommended sanction.
- 241        (h) The court may impose the recommended sanction or  
 242 direct the department to submit a violation report, affidavit,  
 243 and warrant to the court.
- 244        (i) An offender's participation in the program is  
 245 voluntary. The probationer or offender on community control may  
 246 waive or discontinue participation in the program at any time  
 247 before the court imposes a recommended sanction.
- 248        (j) If a probationer or offender on community control  
 249 waives or discontinues participation in the program or fails to  
 250 successfully complete all alternative sanctions within 90 days

251 of imposition or within the timeframe specified in the agreed  
252 upon sanction, the probation officer may submit a violation  
253 report, affidavit, and warrant to the court. A prior admission  
254 by the probationer or offender on community control to a  
255 technical violation may not be used as evidence in subsequent  
256 proceedings.

257 (k) Each judicial circuit shall establish an alternative  
258 sanctioning program as provided in this subsection. The chief  
259 judge of each judicial circuit may, by administrative order,  
260 define additional sanctions or eligibility criteria and specify  
261 the process for reporting technical violations through the  
262 alternative sanctioning program.

263 Section 2. This act shall take effect July 1, 2019.