

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 requiring a court to modify or continue probation for
10 a first-time, low-risk technical violation under
11 certain circumstances; limiting a court to a specified
12 maximum sentence for a first-time, low-risk technical
13 violation under certain circumstances; providing for
14 low-risk and moderate-risk level violations;
15 establishing permissible sanctions for low-risk and
16 moderate-risk violations of probation under the
17 program; establishing eligibility criteria;
18 authorizing a probationer who allegedly committed a
19 technical violation to waive participation in or elect
20 to participate in the program, admit to the violation,
21 agree to comply with the recommended sanction, and
22 agree to waive certain rights; requiring a probation
23 officer to submit the recommended sanction and certain
24 documentation to the court if the probationer admits
25 to committing the violation; authorizing the court to

26 | impose the recommended sanction or direct the
 27 | department to submit a violation report, affidavit,
 28 | and warrant to the court; specifying that a
 29 | probationer's participation in the program is
 30 | voluntary; authorizing a probation officer to submit a
 31 | violation report, affidavit, and warrant to the court
 32 | in certain circumstances; requiring each judicial
 33 | circuit to establish an alternative sanctioning
 34 | program; providing an effective date.

35 |

36 | Be It Enacted by the Legislature of the State of Florida:

37 |

38 | Section 1. Paragraphs (c) through (g) of subsection (1) of
 39 | section 948.06, Florida Statutes, are redesignated as paragraphs
 40 | (d) through (h) respectively, a new paragraph (c) is added to
 41 | that subsection, present paragraph (h) of that subsection is
 42 | amended, paragraphs (f) through (j) of subsection (2) of that
 43 | section are redesignated as paragraphs (g) through (k),
 44 | respectively, a new paragraph (f) is added to that subsection,
 45 | and subsection (9) is added to that section, to read:

46 | 948.06 Violation of probation or community control;
 47 | revocation; modification; continuance; failure to pay
 48 | restitution or cost of supervision.—

49 | (1)

50 | (c) If a probationer or offender on community control

51 commits a technical violation, the probation officer shall
52 determine whether he or she is eligible for the alternative
53 sanctioning program under subsection (9). If the probationer or
54 offender on community control is eligible, the probation officer
55 may proceed with the alternative sanctioning program in lieu of
56 filing an affidavit of violation with the court. For purposes of
57 this section, the term "technical violation" means an alleged
58 violation of supervision that is not a new felony offense,
59 misdemeanor offense, or criminal traffic offense.

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

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

71 ~~a. Eligibility criteria.~~

72 ~~b. The technical violations that are eligible for the~~
73 ~~program.~~

74 ~~e. The sanctions that may be recommended by a probation~~
75 ~~officer for each technical violation.~~

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

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

81 ~~a. Waive participation in the alternative sanctioning~~
82 ~~program, in which case the probation officer may submit a~~
83 ~~violation report, affidavit, and warrant to the court in~~
84 ~~accordance with this section; or~~

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

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

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

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

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

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

99 ~~4. If the offender admits to committing the technical~~
100 ~~violation and agrees with the probation officer's recommended~~

101 ~~sanction, the probation officer must, before imposing the~~
102 ~~sanction, submit the recommended sanction to the court as well~~
103 ~~as documentation reflecting the offender's admission to the~~
104 ~~technical violation and agreement with the recommended sanction.~~

105 ~~5. The court may impose the recommended sanction or may~~
106 ~~direct the department to submit a violation report, affidavit,~~
107 ~~and warrant to the court in accordance with this section.~~

108 ~~6. An offender's participation in an alternative~~
109 ~~sanctioning program is voluntary. The offender may elect to~~
110 ~~waive or discontinue participation in an alternative sanctioning~~
111 ~~program at any time before the issuance of a court order~~
112 ~~imposing the recommended sanction.~~

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

119 (2)

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

123 a. The term of supervision is probation.

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

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

128 d. The court has not previously found the probationer in
129 violation of his or her probation pursuant to a filed violation
130 of probation affidavit during the current term of supervision. A
131 probationer who has successfully completed sanctions through the
132 alternative sanctioning program is eligible for mandatory
133 modification or continuation of his or her probation.

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

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

143 4. For purposes of imposing a jail sentence under this
144 paragraph only, the court may grant credit only for time served
145 in the county jail since the probationer's most recent arrest
146 for the violation. However, the court may not order the
147 probationer to a total term of incarceration greater than the
148 statutory maximum provided by s. 775.082.

149 (9) (a) For a first or second low-risk violation, as
150 provided in paragraph (b), within the current term of

151 supervision, a probation officer may offer an eligible
 152 probationer one or more of the following as an alternative
 153 sanction:

- 154 1. Up to 5 days in the county jail.
- 155 2. Up to 50 additional community service hours.
- 156 3. Counseling or treatment.
- 157 4. Support group attendance.
- 158 5. Drug testing.
- 159 6. Loss of travel or other privileges.
- 160 7. Curfew up to 30 days.
- 161 8. House arrest up to 30 days.
- 162 9. Any other sanction as determined by administrative
 163 order of the chief judge of the circuit.

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

- 166 1. Positive drug or alcohol test result.
- 167 2. Failure to report to the probation office.
- 168 3. Failure to report a change in address or other required
 169 information.
- 170 4. Failure to attend a required class, treatment or
 171 counseling session, or meeting.
- 172 5. Failure to submit to a drug or alcohol test.
- 173 6. A violation of curfew.
- 174 7. Failure to meet a monthly quota on any required
 175 probation condition, including, but not limited to, making

176 restitution payments, payment of court costs, and completing
177 community service hours.

178 8. Leaving the county without permission.

179 9. Failure to report a change in employment.

180 10. Associating with a person engaged in criminal
181 activity.

182 11. Any other violation as determined by administrative
183 order of the chief judge of the circuit.

184 (c) For a first time moderate-risk violation, as provided
185 in paragraph (d), within the current term of supervision, a
186 probation officer, with supervisor approval, may offer an
187 eligible probationer or offender on community control one or
188 more of the following as an alternative sanction:

189 1. Up to 21 days in the county jail.

190 2. Curfew for up to 90 days.

191 3. House arrest for up to 90 days.

192 4. Electronic monitoring for up to 90 days.

193 5. Residential treatment for up to 90 days.

194 6. Any other sanction available for a low-risk violation.

195 7. Any other sanction as determined by administrative
196 order of the chief judge of the circuit.

197 (d) A moderate-risk violation includes any of the
198 following:

199 1. A violation listed under paragraph (b) when committed
200 by an offender on community control;

- 201 2. Failure to remain at an approved residence by an
 202 offender on community control;
- 203 3. A third violation listed under paragraph (b) by a
 204 probationer within the current term of supervision; or
- 205 4. Any other violation as determined by administrative
 206 order of the chief judge of the circuit.
- 207 (e) A probationer or offender on community control is not
 208 eligible for an alternative sanction if:
- 209 1. He or she is a violent felony offender of special
 210 concern, as provided in paragraph (8) (b).
- 211 2. The violation is a felony, misdemeanor, or criminal
 212 traffic offense.
- 213 3. The violation is absconding.
- 214 4. The violation is for a failure to comply with a no-
 215 contact or stay-away order.
- 216 5. The violation is not identified as low-risk or
 217 moderate-risk under this paragraph or by administrative order.
- 218 6. He or she has a prior moderate-risk level violation
 219 during the current term of supervision.
- 220 7. He or she has three or more prior low-risk level
 221 violations during the same term of supervision.
- 222 8. The term of supervision is scheduled to terminate in
 223 less than 90 days.
- 224 9. The terms of the sentence prohibit alternative
 225 sanctioning.

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

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

231 2. Elect to participate in the program after receiving
232 written notice of an alleged technical violation and disclosure
233 of the evidence against him or her, admit to the technical
234 violation, agree to comply with the probation officer's
235 recommended sanction if subsequently ordered by the court, and
236 agree to waive the right to:

237 a. Be represented by legal counsel.

238 b. Require the state to prove his or her guilt before a
239 neutral and detached hearing body.

240 c. Subpoena witnesses and present to a judge evidence in
241 his or her defense.

242 d. Confront and cross-examine adverse witnesses.

243 e. Receive a written statement from a judge as to the
244 evidence relied on and the reasons for the sanction imposed.

245 (g) If the probationer or offender on community control
246 admits to committing the technical violation and agrees with the
247 probation officer's recommended sanction, the probation officer
248 must, before imposing the sanction, submit the recommended
249 sanction to the court with documentation reflecting the
250 probationer's admission to the technical violation and agreement

251 with the recommended sanction.

252 (h) The court may impose the recommended sanction or
253 direct the department to submit a violation report, affidavit,
254 and warrant to the court.

255 (i) An offender's participation in the program is
256 voluntary. The probationer or offender on community control may
257 waive or discontinue participation in the program at any time
258 before the court imposes a recommended sanction.

259 (j) If a probationer or offender on community control
260 waives or discontinues participation in the program or fails to
261 successfully complete all alternative sanctions within 90 days
262 of imposition or within the timeframe specified in the agreed
263 upon sanction, the probation officer may submit a violation
264 report, affidavit, and warrant to the court. A prior admission
265 by the probationer or offender on community control to a
266 technical violation may not be used as evidence in subsequent
267 proceedings.

268 (k) Each judicial circuit shall establish an alternative
269 sanctioning program as provided in this subsection. The chief
270 judge of each judicial circuit may, by administrative order,
271 define additional sanctions or eligibility criteria and specify
272 the process for reporting technical violations through the
273 alternative sanctioning program.

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