

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 Criminal Justice

BILL: SB 752

INTRODUCER: Senators Gainer and Pizzo

SUBJECT: Probationary or Supervision Services for Misdemeanor Offenders

DATE: January 10, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 752 removes a statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. Under current law, a private or a public entity may provide probation services to offenders sentenced by a county court. However, the Department of Corrections (DOC) must supervise felony and misdemeanor offenders who are sentenced to or placed on probation or other supervision by a circuit court.

The bill will have an indeterminate fiscal impact on the DOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Court Jurisdiction

Florida has a two-tiered trial court system that consists of circuit courts and county courts. The state Constitution requires a circuit court to be established in each judicial circuit established by the Legislature, of which there are twenty.¹

Circuit courts have exclusive original jurisdiction over:

- All actions at law not cognizable by the county courts;
- Proceedings related to settling estates of decedents and minors, granting testamentary letters, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to probate courts;

¹ Art. V, ss. 1 and 5, FLA. CONST. A list of judicial circuits can be found at <https://www.flcourts.org/Florida-Courts/Trial-Courts-Circuit> (last visited January 7, 2022).

- All cases in equity including cases related to juveniles, except traffic offenses as provided in chs. 316 and 985, F.S.;
- All felonies and all misdemeanors arising out of the same circumstances as a felony which is also charged;
- All cases involving the legality of any tax assessment or toll or denial of refund, except as provided in s. 72.011, F.S.;
- Ejectment actions; and
- All actions involving the title and boundaries of real property.²

The state Constitution also establishes a county court in each county.³ County courts have original jurisdiction over:

- Misdemeanor cases not cognizable by the circuit courts;
- Violations of municipal and county ordinances; and
- Actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed \$30,000, exclusive of interest, costs, and attorney fees.⁴

Generally, felony offenses are adjudicated by the circuit court and misdemeanor offenses are adjudicated by the county court. However, circuit courts routinely adjudicate misdemeanor charges when:

- A misdemeanor charge arises out of the same circumstances as a felony; or
- A felony charge is reduced or dismissed in circuit court and the court retains jurisdiction over the remaining misdemeanor charge.

Probation and Other Supervision

Probation is a form of community supervision requiring specified contacts with probation officers and compliance with certain terms and conditions.⁵ The court determines the terms and conditions of probation.⁶ Section 948.03, F.S., provides standard conditions of probation; however, a court may sentence an offender to special terms and conditions at the time of sentencing, such as substance abuse treatment.

County Court

A defendant who is placed on probation after being found guilty of a misdemeanor may not be sentenced to a term of supervision exceeding six months, unless otherwise ordered by the court.⁷ Any person sentenced to misdemeanor probation by the county court must pay at least \$40 per

² Section 26.012(2), F.S.

³ Art. V, s. 6, FLA. CONST.

⁴ Section 34.01(1), F.S. The jurisdictional limit for civil actions was \$15,000 prior to January 1, 2020, at which time the jurisdictional limit was raised to \$30,000. The jurisdictional limit is scheduled to rise to \$50,000 on January 1, 2023. The law provides a process by which the jurisdictional limit is to be reviewed and adjusted every 10 years beginning July 1, 2030; however it may not be lower than \$50,000.

⁵ Section 948.01(8), F.S.

⁶ Section 948.03, F.S.

⁷ Section 948.15(1), F.S.

month, as determined by the court, to the court approved public or private entity providing misdemeanor supervision.⁸

A private entity or public entity, including licensed substance abuse education and intervention programs, may provide probation services to offenders sentenced by a county court, when such services are provided under the supervision of the board of county commissioners or the court.⁹ For example, the Salvation Army provides supervision services including drug testing, job assistance, community service placement, and substance abuse assistance and rehabilitation to misdemeanor probationers in multiple Florida counties.¹⁰ Professional Probation Services and its affiliated company, Judicial Correction Services, provide services in a number of Florida counties.¹¹

Any private entity providing supervision services for misdemeanor probationers must contract with the county in which the services will be provided.¹² In a county with a population of less than 70,000, the county court judge, or in a county with more than one county court judge, the administrative judge of the county court must approve the contract. The terms of the contract must include, but are not limited to:

- The extent of the services to be rendered by the entity providing supervision and rehabilitation.
- Staff qualifications and criminal record checks of staff.
- Staffing levels.
- The number of face-to-face contacts with probationers.
- Procedures for handling the collection of probationer fees and restitution.
- Procedures for handling indigent probationers that ensure placement irrespective of ability to pay.
- Circumstances under which revocation of a probationer's supervision may be recommended.
- Reporting and record keeping requirements.
- Default and contract termination procedures.
- Procedures that aid probationers with job assistance.
- Procedures for accessing criminal history records of probationers.¹³

On a quarterly basis, the entity must report to the chief judge a summary of the number of probationers supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of probationers for whom supervision will be terminated. The entity must permit its records to be inspected upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any agent thereof.¹⁴

⁸ Section 948.09(1)(b), F.S.

⁹ Section 948.15(2), F.S.

¹⁰ Such misdemeanor probation services are provided in Citrus, Dixie, Duval, Gilchrist, Highlands, and Marion counties. The Salvation Army, *Correctional Services*, available at <https://salvationarmyflorida.org/correctional-services/> (last visited January 7, 2022).

¹¹ See Professional Probation Services, *Our Companies*, available at <https://ppsfamily.com/our-companies/> (last visited January 7, 2022).

¹² Section 948.15(3), F.S.

¹³ *Id.*

¹⁴ *Id.*

A private entity that charges a fee for providing supervision services to probationers must register with the board of county commissioners in the county in which the entity offers services. The entity must provide specified information for each program it operates, including:

- The length of time the program has been operating in the county;
- A list of the staff and a summary of their qualifications;
- A summary of the types of services that are offered under the program; and
- The fees the entity charges for court-ordered services and any procedures for indigent probationers.¹⁵

A private entity, including a licensed substance abuse education and intervention program, providing misdemeanor supervision services must comply with all other applicable provisions of law.¹⁶

Circuit Court

If the circuit court places a defendant on probation for a felony, the DOC must supervise the defendant.¹⁷ A defendant who is placed on probation for a misdemeanor may not be placed under the DOC's supervision unless the circuit court was the court of original jurisdiction.¹⁸ The DOC currently supervises more than 164,000 offenders on probation or in community control throughout Florida.¹⁹

Any person placed on probation under ch. 948, F.S., must pay the DOC supervision fees equal to the total month or portion of a month of supervision times the court-ordered amount, but such amount cannot exceed the actual per diem cost of supervision.²⁰ The DOC must consider an offender's ability to pay in establishing a written pay plan. Any funds collected from felony probationers may be used by the DOC to offset the costs associated with community supervision programs.²¹

Subsections 948.01(1) and (5), F.S., prohibit a private entity from providing probationary or supervision services to felony or misdemeanor offenders sentenced to probation or other supervision by the circuit court. As such, a private entity is authorized to provide supervision services to a misdemeanor offender sentenced by the county court, but cannot provide such services to a misdemeanor offender sentenced by the circuit court.

¹⁵ Section 948.15(4), F.S.

¹⁶ Section 948.15(5), F.S.

¹⁷ Section 948.01(1)(a), F.S.

¹⁸ Section 948.01(2), F.S.

¹⁹ Florida Department of Corrections, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited January 7, 2022).

²⁰ Section 948.09(1)(a)1., F.S.

²¹ *Id.* Additionally, a felony probationer must pay a \$2-per-month surcharge to be used by the DOC to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and similar equipment. Section 948.09(1)(a)2., F.S.

III. Effect of Proposed Changes:

The bill repeals the statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. The bill authorizes a private entity to provide probationary or supervision services to any misdemeanor offender who is placed on probation, regardless of whether such sentence is imposed by a county or circuit court.

The bill is effective July 1, 2022.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill may have an indeterminate impact on county governments that contract with private entities to provide misdemeanor probationary services. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Private entities who contract to provide probationary services to misdemeanor offenders may experience an increase in workload.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on those counties that contract with private entities to provide probation and supervision services of misdemeanor offenders, due to a possible increase in probationers.

The bill will have an indeterminate fiscal impact on the DOC, as some probationers may be diverted away from the DOC's supervision.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 948.01 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²² Department of Corrections, *2022 Agency Legislative Analysis of SB 752*, pg. 3, (Dec. 10, 2021) (on file with the Senate Committee on Criminal Justice).