

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 Fiscal Policy

BILL: CS/SB 1154

INTRODUCER: Criminal Justice Committee and Senator Simon

SUBJECT: Probation and Community Control Violations

DATE: February 20, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vaughan</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	Favorable
3.	<u>Vaughan</u>	<u>Yeatman</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1154 amends s. 948.06, F.S., to revise provisions related to probation and the Alternative Sanctioning Program (ASP). The bill requires a court to modify or continue, rather than revoke probation, if a probationer meets specified criteria. The bill includes as part of that criteria that the probationer has not been found in violation on two or more separate occasions. A court may modify probation and include up to 90 days jail for a first violation and up to 120 days for a second violation, as a condition of probation.

If the violation is a low risk violation, the court must hold a hearing on a violation of probation within 30 days after arrest or after counsel appears for the probationer or offender, whichever occurs later. If the hearing is not held within 30 days, the court must release the probationer or offender without bail unless the court determines that the hearing was not held in the applicable time frame due to circumstances attributable to the probationer or offender. The court may impose nonmonetary conditions of release.

The bill amends s. 921.0024, F.S., to provide that if a community sanction violation is committed by a felony offender and such community sanction violation is resolved through the alternative sanctioning program, no points are assessed. If a community sanction violation that has not been resolved through the alternative sanctioning program is before the court, no points are assessed for prior violations that were resolved through the alternative sanctioning program.

The bill may have a negative indeterminate prison bed impact (i.e., reduced demand on prison bed capacity). See Section V., Fiscal Impact Statement.

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Probation and Community Control

Probation is a form of community supervision requiring specified contacts with a probation officer and other terms and conditions.¹ Community control is a more intensive form of supervision involving an individualized program that restricts the offender's movement within the community, home, or residential placement.²

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.³ The court may also impose special conditions, such as community service hours, regular drug or alcohol testing, no contact orders, and treatment programs.⁴ Failure to meet any condition of supervision is a violation of probation or community control (VOP).

Generally, upon a finding that an offender violated probation or community control, the court may revoke, modify, or continue supervision.⁵ If the court revokes supervision, it may impose any sentence that was permissible at the offender's initial sentencing.⁶

If a violent felony offender of special concern (VFOSC)⁷ commits a VOP and the court finds the VFOSC poses a danger to the community, the court must revoke probation and sentence the offender up to the statutory maximum, or longer if permitted by law.⁸

When a person is arrested for committing a crime, he or she is generally entitled to pretrial release on reasonable conditions under the Florida Constitution.⁹ However, a person taken into custody for a VOP does not have a constitutional right to release pending the disposition of the VOP.¹⁰ If the offender qualifies as a VFOSC, the court is prohibited from granting pretrial release.¹¹

¹ Section 948.001(8), F.S.

² Section 948.001(3), F.S.

³ Section 948.03(1), F.S.

⁴ Section 948.03(2), F.S.

⁵ Section 948.06(2)(a), F.S.

⁶ Section 948.06(2)(b), F.S.

⁷ A VFOSC is an offender who commits a specified qualifying offense or is in a special status like habitual violent felony offender and meets other specified criteria. Examples of qualified offenses include murder, kidnapping, and sexual battery. For a complete list of criteria, see s. 948.06(8), F.S.

⁸ Section 948.06(8)(e)2.a., F.S.

⁹ Art. I, s. 14, Fla. Const. Exceptions include when a person is charged with a capital offense or offense punishable by life and the proof of guilt is evident or the presumption is great, or if no conditions can reasonably protect the community from risk of physical harm.

¹⁰ *Bernhardt v. State*, 288 So. 2d 490, 497 (Fla. 1974).

¹¹ Section 903.0351(1)(a), F.S.

Alternative Sanctioning Program

Section 948.06(9), F.S., requires each judicial circuit to establish an alternative sanctioning program (ASP) as provided in that subsection. The chief judge of each judicial circuit may, by administrative order, define additional sanctions or eligibility criteria and specify the process for reporting technical violations through the alternative sanctioning program. Any sanctions recommended for imposition through an alternative sanctions program must be submitted to the court by the probation officer for approval before imposing the sanction.¹²

If a probationer or offender on community control commits a technical violation, the probation officer must determine whether the probationer or offender on community control is eligible for the ASP. If the probation officer determines that the probationer or offender on community control is eligible, the probation officer may proceed with the ASP in lieu of filing an affidavit of violation with the court. For purposes of s. 948.06, F.S., the term “technical violation” means an alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.¹³

The ASP identifies eligible offenders, eligible violations, and permissible sanctions. Eligible violations are classified as either low-risk or moderate-risk.

Low-risk violations only apply to probationers, not offenders on community control, and include:

- A positive drug or alcohol test result;
- Failure to report to the probation office;
- Failure to report a change in address or other required information;
- Failure to attend a required class, treatment or counseling session, or meeting;
- Failure to submit to a drug or alcohol test;
- Violation of curfew;
- Failure to meet a monthly quota for any required probation condition, including making restitution payments, paying court costs, and completing community service hours;
- Leaving the county without permission;
- Failure to report a change in employment;
- Associating with people engaged in criminal activity; or
- Any other violation as determined by administrative order of the chief judge of the circuit.¹⁴

Moderate-risk violations include:

- Any violation classified as low-risk when committed by an offender on community control;
- Failure to remain at an approved residence by an offender on community control;
- A third low-risk violation by a probationer; or
- Any other violation as determined by administrative order of the chief judge of the circuit.¹⁵

¹² Section 948.06(9)(a), F.S.

¹³ Section 948.06(1)(c), F.S.

¹⁴ Section 948.06(9)(b), F.S.

¹⁵ Section 948.06(9)(c), F.S.

Participation in an ASP is voluntary.¹⁶ However, in no circumstance does participation in an ASP convert a withhold of adjudication into an adjudication of guilt.¹⁷

If a probationer or offender on community control is eligible for the ASP, he or she may:

- Waive participation in the program, in which case the probation officer may submit a violation report, affidavit, and warrant to the court; or
- Elect to participate in the ASP after receiving written notice of an alleged technical violation and disclosure of the evidence against him or her, and admit the technical violation, agree to comply with the probation officer's recommended sanction if subsequently ordered by the court, and agree to waive the right to:
 - Be represented by legal counsel.
 - Require the state to prove his or her guilt before a neutral and detached hearing body.
 - Subpoena witnesses and present to a judge evidence in his or her defense.
 - Confront and cross-examine adverse witnesses.
 - Receive a written statement from a judge as to the evidence relied on and the reasons for the sanction imposed.¹⁸

If the probationer or offender on community control admits to committing the technical violation and agrees with the probation officer's recommended sanction, the probation officer must, before imposing the sanction, submit the recommended sanction to the court with documentation reflecting the probationer's admission to the technical violation and agreement with the recommended sanction.¹⁹

The court may impose the recommended sanction or direct the department to submit a violation report, affidavit, and warrant to the court.²⁰

If a probationer or offender on community control waives or discontinues participation in the program or fails to successfully complete all alternative sanctions within 90 days after imposition or within the timeframe specified in the agreed-upon sanction, the probation officer may submit a violation report, affidavit, and warrant to the court. A prior admission by the probationer or offender on community control to a technical violation may not be used as evidence in subsequent proceedings.²¹

The permissible sanctions correspond to the violation risk level. For example, a probation officer may impose sanctions such as additional community service hours, counseling or treatment, drug testing, or curfew in response to a low-risk violation.²² In response to a moderate-risk violation, examples of additional sanctions include residential treatment or electronic monitoring for up to 90 days or a maximum jail sentence of up to 21 days.²³ Such responses are designed to be

¹⁶ Section 948.06(9)(g), F.S.

¹⁷ Section 948.06(9)(e)9.b. and (f)7.b., F.S.

¹⁸ Section 948.06(9)(h)1., F.S.

¹⁹ Section 948.06(9)(h)2., F.S.

²⁰ Section 948.06(9)(i), F.S.

²¹ Section 948.06(9)(j), F.S.

²² Section 948.06(9)(e), F.S.

²³ Section 948.06(9)(f), F.S.

proportional to the severity of the technical violation and to directly respond to the nature of the technical violation.

Offenders are disqualified from alternative sanctioning under any of the following circumstances:

- The offender is a VFOSC;
- The violation is a felony, misdemeanor, or criminal traffic offense;
- The violation is absconding;
- The violation is of a stay-away order or no-contact order;
- The violation is not identified as low-risk or moderate-risk by statute or administrative order;
- The offender has a prior moderate-risk level violation during the same term of supervision;
- The offender has three prior low-risk level violations during the same term of supervision;
- The term of probation is scheduled to terminate in less than 90 days; or
- The terms of the sentence prohibit alternative sanctioning.²⁴

Court Modification of Probation Order and Jail Term for Low-Risk Violation

Section 948.06(2)(f), F.S., requires a court to modify probation and imposes a 90-day jail cap for specified probationers appearing before a court for committing a low-risk technical violation. Unless waived by a defendant, a court is required to modify or continue a probationary term, when all of the following apply:

- The term of supervision is probation, rather than community control.
- The probationer does not qualify as a violent felony offender of special concern.
- The violation is a low-risk technical violation.
- The court has not previously found the probationer in violation of probation during the current term of supervision.

If a probationer has less than 90 days of supervision remaining on his or her term of probation and meets the criteria for mandatory modification of probation, a court may revoke probation and sentence the probationer to 90 days in county jail.²⁵

Criminal Punishment Code and Community Sanction Violation Points

The Criminal Punishment Code²⁶ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).²⁷ Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates and points may also be added or multiplied for other enumerated factors. The lowest permissible sentence is when the total sentence points are equal to or less than 44 points is any non-state prison sanction, unless the court determines that a prison sentence is appropriate. If the total sentence points exceed 44 points, the lowest permissible sentence in prison months is

²⁴ Section 948.06(9)(d), F.S.

²⁵ Section 948.06(2)(f)3., F.S.

²⁶ Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

²⁷ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

calculated by a specified formula.²⁸ Absent mitigation,²⁹ the permissible sentencing range under the Code is generally the lowest permissible sentence up to and including the maximum penalty provided under s. 775.082, F.S.³⁰

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

- If the community sanction violation includes a new felony conviction before the sentencing court, 12 community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.
- If the community sanction violation is committed by a VFOSC:
 - Twelve community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:
 - The violation does not include a new felony conviction; and
 - The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or make restitution payments.
 - Twenty-four community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new felony conviction.³¹

Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.³²

III. Effect of Proposed Changes:

The bill amends s. 948.06, F.S., to revise provisions related to probation and the Alternative Sanctioning Program (ASP). The bill requires a court to modify or continue, rather than revoke probation, if a probationer meets specified criteria. The bill includes as part of that criteria that the probationer has not been found in violation on two or more separate occasions. A court may modify probation and include up to 90 days jail for a first violation and up to 120 days for a second violation, as a condition of probation.

If the violation is a low risk violation, the court must hold a hearing on a violation of probation within 30 days after arrest or after counsel appears for the probationer or offender, whichever occurs later. If the hearing is not held within 30 days, the court must release the probationer or offender without bail unless the court determines that the hearing was not held in the applicable time frame due to circumstances attributable to the probationer or offender. The court may impose nonmonetary conditions of release.

²⁸ Section 921.0024, F.S., provides the formula is the total sentence points minus 28 times 0.75.

²⁹ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

³⁰ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

³¹ Section 921.0024(1)(b), F.S.

³² *Id.*

The bill amends s. 921.0024, F.S., to provide that if a community sanction violation is committed by a felony offender and such community sanction violation is resolved through the alternative sanctioning program, no points are assessed. If a community sanction violation that has not been resolved through the alternative sanctioning program is before the court, no points are assessed for prior violations that were resolved through the alternative sanctioning program.

The bill provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined the bill has a negative indeterminate impact on prison beds (unquantifiable decrease in prison beds) due to the possible increased use of alternative sanctions programs and the subsequent decrease in the number of technical violators sent to prison.³³

³³ Office of Economic and Demographic Research *SB 1154*,
<http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1154.pdf>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.0024 and 948.06.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 6, 2024:

The committee substitute:

- Restructures and clarifies the intent of the language. Under the amendment if any community sanction violation is resolved through the alternative sanctioning program, no points are assessed.

- B. **Amendments:**

None.