

**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.)

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Prepared By: The Professional Staff of the Appropriations Committee on Criminal and Civil Justice

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BILL: SB 878

INTRODUCER: Senator Martin

SUBJECT: Probation for Misdemeanor Offenses

DATE: March 17, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vaughan</u>	<u>Stokes</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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## I. Summary:

SB 878 amends s. 948.15, F.S., to authorize the court to sentence a defendant who is found guilty of any misdemeanor to a term of probation of up to one year if a controlled substance, a controlled substance analog, or a chemical substance was a significant factor in the commission of the crime.

The bill is not expected to have a fiscal impact on state or local governments. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2025.

## 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.<sup>1</sup>

Circuit courts have exclusive original jurisdiction over all felonies and all misdemeanors arising out of the same circumstances as a felony which is also charged. The state Constitution also establishes a county court in each county.<sup>2</sup> County courts have original jurisdiction over misdemeanor cases not cognizable by the circuit courts.

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<sup>1</sup> 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 March 3, 2025).

<sup>2</sup> Art. V, s. 6, FLA. CONST.

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.<sup>3,4</sup> The court determines the terms and conditions of probation.<sup>5</sup> Section 948.03, F.S., provides standard conditions of probation,<sup>6</sup> however, a court may sentence an offender to special terms and conditions at the time of sentencing, such as substance abuse treatment.

#### ***Maximum Term of Probation***

The Florida Supreme Court addressed the issue of whether a trial court must credit previous time served on probation toward any newly imposed term of probation upon revocation, to ensure that the total probationary term does not exceed the statutory maximum for a single offense.<sup>7</sup> The maximum term of probation to which a judge may sentence a defendant depends on the offense that the defendant committed. Penalties for misdemeanors are:

- A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine.<sup>8</sup>
- A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine.<sup>9</sup>
- A term of probation for a misdemeanor may not exceed six months unless otherwise specified in s. 948.15, F.S.<sup>10</sup>

#### ***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.<sup>11</sup> Any person sentenced to misdemeanor probation by the county court must pay at least \$40 per month, as determined by the court, to the court approved public or private entity providing misdemeanor supervision.<sup>12</sup>

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<sup>3</sup> Section 948.001(8), F.S.

<sup>4</sup> Florida Department of Corrections, *Probation Services*, available at <https://www.fdc.myflorida.com/probation-services> (last visited March 3, 2025).

<sup>5</sup> Section 948.03, F.S.

<sup>6</sup> Section 948.03(1)(a-1), F.S. Standard conditions include, in part, reporting to the probation officer as directed, permitting visits by the probation officer, work at suitable employment, and live without violating any law.

<sup>7</sup> *State v. Summers*, 642 So. 2d 742 (Fla. 1994). *State v. Holmes*, 360 So. 2d 380 (Fla. 1978).

<sup>8</sup> Sections 775.082 and 775.083, F.S.

<sup>9</sup> Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 948.15(1), F.S. In relation to any offense other than a felony in which the use of alcohol is a significant factor, the period of probation may be up to 1 year.

<sup>11</sup> Section 948.15(1), F.S.

<sup>12</sup> Section 948.09(1)(b), F.S.

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.<sup>13</sup>

### ***Circuit Court***

If the circuit court places a defendant on probation for a felony, the Florida Department of Corrections (DOC) must supervise the defendant.<sup>14</sup> 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.<sup>15</sup> The DOC currently supervises 145,000 offenders on probation or in community control throughout Florida.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

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.

### **Florida Controlled Substance Schedules**

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"<sup>19</sup> of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.

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<sup>13</sup> Section 948.15(2), F.S.

<sup>14</sup> Section 948.01(1)(a), F.S.

<sup>15</sup> Section 948.01(2), F.S.

<sup>16</sup> Florida Department of Corrections, *Probation Services*, available at <https://www.fdc.myflorida.com/probation-services> (Last visited March 4, 2025).

<sup>17</sup> Section 948.09(1)(a)1., F.S.

<sup>18</sup> *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.

<sup>19</sup> Section 893.035(3)(a), F.S., defines "potential for abuse" as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

### ***Controlled Substance Analog***

A “controlled substance analog” is defined in s. 893.0356(2)(a), F.S., as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- The substance is substantially similar to that of a controlled substance listed in Schedule I; or
- Schedule II of s. 893.03, F.S.; and
- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.

### ***Chemical Substance***

A chemical substance is any substance identified in s. 877.111, F.S., which is the criminal statute identifying certain harmful chemical substances, or ch. 893, F.S., which identifies controlled substances.<sup>20</sup> However, the term does not include any drug or medication obtained pursuant to a prescription which was taken in accordance with the prescription,<sup>21</sup> or any medication that is authorized under state or federal law for general distribution and use without a prescription in treating human diseases, ailments, or injuries and that was taken in the recommended dosage.

## **III. Effect of Proposed Changes:**

The bill amends s. 948.15, F.S. to authorize a court to sentence a defendant who is found guilty of a misdemeanor to a term of probation of up to one year if a controlled substance,<sup>22</sup> a

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<sup>20</sup> Section 768.36(1), F.S.

<sup>21</sup> A “prescription” includes any order for drugs or medicinal supplies which is written or transmitted by any means of communication by a licensed practitioner authorized by the laws of Florida to prescribe such drugs or medicinal supplies, it issued in good faith and in the course of professional practice, is intended to be dispensed by a person authorized by the laws of Florida to do so, and meets the requirements of s. 893.04, F.S. (regulating pharmacists and practitioners). Section 893.02(24), F.S.

<sup>22</sup> Section 893.02, F.S.

controlled substance analog,<sup>23</sup> or a chemical substance<sup>24</sup> is a significant factor in the commission of the offense.

Current law provides that the maximum term of probation is 6 months unless otherwise specified by a court.

The bill takes effect on July 1, 2025.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

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<sup>23</sup> Section 893.0356, F.S.

<sup>24</sup> Section 877.111(1), F.S.

C. Government Sector Impact:

The bill is not expected to impact state or local government revenues and expenditures.<sup>25</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 948.15 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.

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

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<sup>25</sup> Office of Economic and Demographic Research, *SB 878 – Probation for Misdemeanor Offenses* (on file with the Senate Committee on Criminal Justice).