Justice Appropriations Subcommittee

Tuesday, April 5, 2011
4:00 p.m.
Morris Hall

MEETING PACKET

Dean Cannon
Speaker

Richard Glorioso
Chair

The Florida House of Representatives

Justice Appropriations Subcommittee

Dean Cannon
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AGENDA

Tuesday, April 5, 2011
4:00 p.m.
Morris Hall (17 HOB)

I. Call to Order/Roll Call

II. Opening Remarks

Consideration of the following bill(s):

CS/HB 81 Treatment-based Drug Court Programs by Health & Human Services Access Subcommittee, Rouson

CS/HB 443 Electronic Filing and Receipt of Court Documents by Criminal Justice Subcommittee, Boyd

CS/HB 575 Violations Of Probation or Community Control by Criminal Justice Subcommittee, Caldwell

HB 4035 Misdemeanor Pretrial Substance Abuse Programs by Waldman

III. Closing Remarks and Adjournment

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 81 Treatment-based Drug Court Programs
SPONSOR(S): Health & Human Services Access Subcommittee; Rouson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 400

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 1 N	Krol	Cunningham
2) Health & Human Services Access Subcommittee	14 Y, 0 N, As CS	Batchelor	Schoolfield
3) Justice Appropriations Subcommittee		McAuliffe	Jones Darity
4) Judiciary Committee			

SUMMARY ANALYSIS

Post-adjudicatory drug courts serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.

In 2009, the admission criteria for post-adjudicatory drug courts was created to include more serious prison-bound, non-violent offenders and to allow drug court judges to hear any probation or community control violations related to failed substance abuse tests. The goal was to increase state savings by diverting prison-bound offenders to drug court programming. However, the Office of Program Policy Analysis & Government Accountability recently reported that without further post-adjudicatory drug court program expansion the projected savings will not be realized.

CS/HB 81:

- Allows the drug court participant to have all their probation and community control violations heard by the judge presiding over the post-adjudicatory drug court.
- Allows an offender to be placed into a post-adjudicatory drug court after violating the terms of their probation or community control.
- Increases the number of sentencing points required for admission into the post-adjudicatory treatment-based drug court program from 52 to 60 to allow more offenders to be sentenced to the program.

The Criminal Justice Impact Conference met March 2, 2011 and determined that this bill will have an indeterminate impact on state prison beds. While there is a potential savings to the state by diverting offenders bound for prison incarceration, it largely relies on the discretionary nature of judicial behavior.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drug Court Background

The drug court concept was developed in 1989 in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding. The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were "revolving back through the criminal justice system because of underlying problems of drug addiction." The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together. There are two types of drug court programs: pre-trial diversion and post-adjudicatory.[1]

Pre-trial Diversion Drug Courts
Pre-trial diversion drug courts are designed for first-time offenders who, in lieu of the program, would likely be placed on county probation. Participants are diverted into the program prior to adjudication. Upon successful completion of the program, the offender's charges may be dropped.[2]

A person is eligible for pretrial diversion drug court if he or she is charged with a second or third degree felony for purchase or possession of a controlled substance under chapter 893, F.S., prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud and he or she:

- Has not been charged with a crime involving violence, including but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence;
- Has not previously been convicted of a felony nor been admitted to a felony pretrial program referred to in s. 948.08, F.S.; and
- Has not rejected on the record previously offered admission into the program.[3,4]

Post-adjudicatory Drug Courts
Post-adjudicatory drug courts serve non-violent, drug addicted offenders who have been adjudicated and typically have prior convictions. Post-adjudicatory drug courts generally use graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions can include mandatory community service, extended probation, or jail stays.[5] Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.[6]

Post-adjudicatory Drug Court Expansion

In 2009, the Legislature appropriated $19 million in federal funds from the Edward Byrne Memorial Justice Assistance Grant to expand post-adjudicatory drug courts into eight counties.[7] Currently, there are 30 post-adjudicatory drug courts operating in 14 judicial circuits.[8]

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[1] *The Florida Drug Court System*, Publication by the Florida Supreme Court, revised January 2004, p.1.
[2] *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, Office of Program Policy Analysis & Government Accountability, Report No. 09-13.
[3] Section 948.08(6)(a), F.S.
[4] However, if the state attorney can prove that the defendant was involved in the dealing or selling of controlled substances, the court can deny the defendant's admission into a pretrial intervention program. Section 948.08(6)(a)2., F.S.
[5] OPPAGA Report No. 09-13.
[6] OPPAGA Report No. 09-13.
[7] *Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings*, Office of Program Policy Analysis & Government Accountability, Report No. 10-54.
[8] Treatment-Based Drug Courts in Florida, Office of the State Courts Administrator, Updated October 28, 2010. On file with the Criminal Justice Subcommittee.

Through the passage of Ch. 2009-64, L.O.F., the Legislature created criteria for admission to post-adjudicatory drug courts to include more serious prison-bound, non-violent offenders.[9] The goal was to divert these offenders from prison and reduce corrections costs by an estimated $95 million. The eligibility criteria for post-adjudicatory drug court is based on the sentencing court's assessment of the defendant's:

- Criminal history,[10]
- Substance abuse screening outcome,
- Amenability to the services of the program,
- Total sentence points (must be 52 or fewer,)
- Agreement to enter the program, and
- The recommendation of the state attorney and the victim, if any.[11]

The 2009 expansion allowed for two ways for an offender to participate in post-adjudicatory drug court:

- An offender can be sentenced to drug court as a condition of their probation or community control.[12]
- An offender can be placed into drug court after violating the terms of their probation or community control due to a failed or suspect substance abuse treatment test.[13]

In addition, the expansion provided:

- Violations of probation or community control by a post-adjudicatory drug court participant due to a failed or suspect substance abuse test to be heard by the judge presiding over the post-adjudicatory drug court program. After a hearing on or admission of the violation, the judge disposes of such violation, as he or she deems appropriate.[14]
- A mitigating sentence factor[15] that allows a defendant to participate in a post-adjudicatory program if the defendant committed a nonviolent felony,[16] has a Criminal Punishment Code scoresheet total of 52 points or fewer after including points for the violation, and is amenable to the services and is otherwise qualified.

2010 OPPAGA Report

In 2010, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) issued a report on the post-adjudicatory drug court expansion. OPPAGA reported the post-adjudicatory drug courts were generally meeting standards for their operation, but that they were not likely to generate the projected cost savings. Specifically OPPAGA found that, initial admissions targets overestimated

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[9] Prior to 2009, Florida statutes did not address eligibility criteria for post-adjudicatory drug court.

[10] Section 948.06(2)(i)c., F.S., allows for a defendant who violated their probation or community control to be placed in a post-adjudicatory drug court if the underlying offense is a nonviolent felony. Section 948.01, F.S., states that a defendant can be sentenced to drug court as a condition of their probation or community control if they are a nonviolent felony offender. In both instances, nonviolent felony is defined as a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

[11] Sections 397.334(3)(a), F.S.

[12] Section 948.01, F.S.

[13] Section 948.06(2)(i)a., F.S.

[14] Section 397.334(3)(b), F.S. Prior to 2009, violations by post-adjudicatory drug court participants had to be heard by the court that originally granted their probation or community control. Section 948.06, F.S.

[15] The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Section 921.0026, F.S., provides that a sentence may be "mitigated," which means that the length of a state prison sentence may be reduced or a non-prison sanction may be imposed even if the offender scored a prison sentence, if the court finds any permissible mitigating factor.

[16] Section 948.08(6), F.S., defines the term "nonviolent felony" as a third degree felony violation of chapter 810 (entitled Burglary and Trespass) or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

the potential population of offenders who would qualify for the programs, strict eligibility criteria limited admissions, and some programs appeared to be serving offenders who would be unlikely to be sentenced to prison in the absence of drug court.[17]

The Office of the State Court Administrator reported to OPPAGA that "as of June 30, 2010, the state had not spent approximately $18.1 million, or 96%, of the funds." The state has until September 30, 2012 to spend the remaining amount before the money is reverted back to the federal government.

To prevent reverting the funds and to increase state savings by diverting prison-bound offenders, OPPAGA made the following suggestions to the Legislature:

- Expand drug court criteria to serve more prison-bound offenders by:
    - Authorizing drug courts to serve offenders who are cited for technical violations of probation other than a failed substance abuse test, if substance abuse was the main factor at the time of their violation, and
    - Giving judges discretion to allow offenders with prior violent offenses who are appropriate for treatment and do not present a risk to public safety to participate in expansion drug court.
- Include additional counties to divert more prison-bound offenders.
- Require existing expansion courts to serve predominantly prison-bound offenders.
- Shift federal drug court funds to other prison diversion programs.

Effect of the Bill

HB 81 removes the nonviolent felony offender admission criteria from s. 948.01, F.S., and mirrors the admission criteria found in s. 948.06, F.S., to allow a defendant to be placed into a post-adjudicatory drug court when the offense he or she committed was a nonviolent felony.

Currently only probation and community control violations related to a failed or suspect substance abuse test are heard by the judge presiding over the post-adjudicatory drug court. The bill allows the drug court participant to have all of their probation and community control violations heard by the presiding post-adjudicatory drug court judge.

The bill allows an offender to be placed into a post-adjudicatory drug court after violating any of the terms of their probation or community control. This expands current law which allows offenders to be placed into a post-adjudicatory drug court for only violations related to a failed or suspect substance abuse test.

The bill also increases the maximum amount of Criminal Punishment Code scoresheet points from 52 to 60 that an offender can have and still be eligible for participation in the post-adjudicatory drug court program. Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for a post-adjudicatory drug court program may not score more than 60 sentencing points.

[17] *Id.*

B. SECTION DIRECTORY:

Section 1. Amends s. 397.334, F.S., relating to treatment-based drug court programs.

Section 2. Amends s. 921.0026, F.S., relating to mitigating circumstances.

Section 3. Amends s. 948.01, F.S., relating to when a court may place defendant on probation or into community control.

Section 4. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 5. Amends s. 948.20, F.S., relating to drug offender probation.

Section 6. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Substance abuse treatment providers could see a positive fiscal impact if more people become eligible for post-adjudicatory drug court.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met March 2, 2011 and determined that this bill will have an indeterminate impact on state prison beds. While there is a potential savings to the state by diverting offenders bound for prison incarceration, it largely relies on the discretionary nature of judicial behavior.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2011, the Health and Human Services Access Subcommittee adopted a proposed committee substitute for House Bill 81. The proposed committee substitute made the following changes to HB 81:

- Removed language providing that a court has the discretion to allow offenders with prior violent felony offenses into postadjudicatory treatment-based drug court programs on a case-by case basis.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

A bill to be entitled

An act relating to treatment-based drug court programs; amending s. 397.334, F.S.; requiring all offenders sentenced to a postadjudicatory drug court program who are drug court participants who are the subject of a violation of probation or community control hearing under specified provisions to have the violation of probation or community control heard by the judge presiding over the drug court program; providing that treatment-based drug court programs may include postadjudicatory programs provided under specified provisions; amending s. 921.0026, F.S.; increasing the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible for a postadjudicatory treatment-based drug court program; amending s. 948.01, F.S.; increasing the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible for a postadjudicatory treatment-based drug court program; amending s. 948.06, F.S.; making defendants other than those who have violated probation or community control by a failed or suspect substance abuse test eligible for postadjudicatory treatment-based drug court programs; increasing the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible for a postadjudicatory treatment-based drug court program; amending s. 948.20, F.S.; increasing the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible

for a postadjudicatory treatment-based drug court program; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) and subsection (5) of section 397.334, Florida Statutes, are amended to read:

397.334 Treatment-based drug court programs.—

(3)

(b) An offender who is sentenced to a postadjudicatory drug court program and who, while a drug court participant, is the subject of a violation of probation or community control under s. 948.06~~, based solely upon a failed or suspect substance abuse test administered pursuant to s. 948.01 or s. 948.03,~~ shall have the violation of probation or community control heard by the judge presiding over the postadjudicatory drug court program. The judge shall dispose of any such violation, after a hearing on or admission of the violation, as he or she deems appropriate if the resulting sentence or conditions are lawful.

(5) Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs as provided in ss. 948.01, 948.06, and 948.20, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under

subsection (4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.

Section 2. Paragraph (m) of subsection (2) of section 921.0026, Florida Statutes, is amended to read:

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

(m) The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 ~~52~~ points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in s. 948.08(6).

Section 3. Paragraph (a) of subsection (7) of section 948.01, Florida Statutes, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(7)(a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 ~~52~~ points or fewer, ~~and~~ the offense ~~defendant~~ is a nonviolent felony ~~offender~~, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3). The satisfactory completion of the program shall be a condition of the defendant's probation or community control. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

Section 4. Paragraph (i) of subsection (2) of section 948.06, Florida Statutes, is amended to read:

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

(2)

(i)1. Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the court may order the defendant to successfully complete a postadjudicatory treatment-based drug court program if:

a. The court finds or the offender admits that the offender has violated his or her community control or probation ~~and the violation was due only to a failed or suspect substance abuse test~~;

b. The offender's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 ~~52~~ points or fewer after including points for the violation;

c. The underlying offense is a nonviolent felony. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08;

d. The court determines that the offender is amenable to the services of a postadjudicatory treatment-based drug court program;

e. The court has explained the purpose of the program to the offender and the offender has agreed to participate; and

f. The offender is otherwise qualified to participate in the program under the provisions of s. 397.334(3).

2. After the court orders the modification of community control or probation, the original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory treatment-based drug court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed.

Section 5. Section 948.20, Florida Statutes, is amended to read:

948.20 Drug offender probation.—

(1) If it appears to the court upon a hearing that the defendant is a chronic substance abuser whose criminal conduct is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent felony if such nonviolent felony is committed on or after July 1, 2009, and notwithstanding s. 921.0024 the defendant's Criminal Punishment Code scoresheet total sentence points are 60 ~~52~~ points or fewer, the court may either adjudge the defendant guilty or stay and withhold the adjudication of guilt. In either case, the court may also stay and withhold the imposition of sentence and place the defendant on drug offender probation or into a postadjudicatory treatment-based drug court program if the defendant otherwise qualifies. As used in this section, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

(2) ~~(1)~~ The Department of Corrections shall develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which includes provision for supervision of offenders in accordance with a specific treatment plan. The program may include the use of graduated sanctions consistent with the conditions imposed by the court. Drug offender probation status shall include surveillance and random drug testing, and may include those measures normally associated with community control, except that specific treatment conditions and other treatment approaches necessary to monitor this population may be ordered.

(3) ~~(2)~~ Offenders placed on drug offender probation are subject to revocation of probation as provided in s. 948.06.

Section 6. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 443 Electronic Filing and Receipt of Court Documents
SPONSOR(S): Criminal Justice Subcommittee; Boyd and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Williams	Cunningham
2) Justice Appropriations Subcommittee		Toms	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

In 2009, the Legislature passed SB 1718, which required each clerk of the court to implement a statewide, uniform electronic filing process for court documents using standards to be specified by the Supreme Court. The Legislature's intent for requiring the implementation of electronic filing was "to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."

CS/HB 443 creates ss. 27.341 and 27.5112, F.S., which are both entitled, "Electronic filing and receipt of court documents." The bill requires that offices of the state attorney and the public defender electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court.

The bill specifies that electronic filing and receipt of court documents is expected by the Legislature to:

- Reduce costs for the offices of the state attorney and the public defender, the clerk of court, and the judiciary;
- Increase timeliness in the processing of cases; and
- Provide the judiciary and the clerk of court with case-related information to allow for improved judicial case management.

The bill further expresses the expectation of the Legislature that each office of the state attorney and the public defender consult with specified entities in implementing the bill's electronic filing and receipt of court documents requirement.

The bill also requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, on the progress made to use the Florida Courts E-Portal, or other clerks' offices portals for purposes of electronic filing and receipt of court documents.

The bill requires that offices of the state attorney and of the public defender electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court. Therefore, counties would be required to provide any funds associated with implementation of the electronic filing process. However, some State Attorneys and Public Defenders have begun implementing electronic filing.

The bill has an effective date of July 1, 2011.

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background - Electronic Filing of Court Documents

The clerks and courts have been collaborating on e-filing for many years. While many individual efforts have been made by some clerks' offices, there has been a move in the last four years toward a statewide approach to implement e-filing.[1]

In February 2006, the Florida Supreme Court (Court) issued Administrative Order SC06-3, establishing the Electronic Filing Committee as an ad hoc committee of the Florida Courts Technology Commission.[2] The purpose of the committee was, "to assist the Supreme Court and the Office of the State Courts Administrator by evaluating proposed plans submitted by clerks of courts, pursuant to Rule 2.090, Florida Rules of Judicial Administration, to implement the electronic filing of documents as well as subsequent documentation submitted prior to the discontinuation of follow-up filings."[3]

Meetings held resulted in the E-filing Operational Policies for Florida Statewide Electronic Filing Portal document, developed by the Florida Association of Court Clerks (FACC) and the Office of the State Courts Administrator (OSCA).[4] On April 30, 2008, the Court, in conference, approved the "E-filing Operational Policies, Florida Statewide Electronic Filing Portal" (E-Portal) document.[5] At the committee's request, FACC submitted a proposal to build a portal based on the Court's and National Center for State Courts' (NCSC) standards under the Court's jurisdiction on November 1, 2006. In 2007, FACC began development of the E-Portal.[6]

SB 1718

In 2009, the Legislature passed SB 1718, requesting that, no later than July 1, 2009, the Court set statewide standards for electronic filing of court documents and requiring each clerk of the court to implement a statewide, uniform electronic filing process using the standards specified by the Court.[7] The standards should specify the required information for the duties of the clerks of court and the judiciary for case management.[8] The Legislature's intent for requiring the implementation of electronic filing was "to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."[9]

The federal court system already uses an electronic filing system called PACER (Public Access to Court Electronic Records).[10] Additionally, there are 13 states and the District of Columbia using statewide electronic filing systems.[11] Those states are: Alabama, Arizona, California, Colorado,

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[1] Florida Clerks of Court Operations Corporation, *E-filing Implementation: Status Report of E-filing Implementation By Florida Clerks Of The Circuit Court* (March 1, 2010). (www.flccoc.org/reportsforms/CCOCEFilingReport.pdf) (last accessed March 18, 2011).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] Florida Supreme Court, Standards for Electronic Access to the Courts, (June 2009). (http://www.flcourts.org/gen_public/technology/bin/Standards-ElectronicAccess.pdf) (last accessed March 17, 2011).
[6] Florida Clerks of Court Operations Corporation, *E-filing Implementation: Status Report of E-filing Implementation By Florida Clerks Of The Circuit Court* (March 1, 2010). (www.flccoc.org/reportsforms/CCOCEFilingReport.pdf) (last accessed March 18, 2011).
[7] Chapter 2009-61, L.O.F.
[8] *Id.*
[9] *Id.*
[10] PACER, *PACER Home*, (http://www.pacer.gov/) (last accessed March 17, 2011).
[11] American Bar Association, *Electronic Filing Resource Page*, (http://www.abanet.org/tech/ltrc/research/efiling/home.html) (last accessed March 17, 2011).

Connecticut, Delaware, New Jersey, New York, North Carolina, North Dakota, Ohio, Texas, and Washington.[12]

Supreme Court Standards

In response to SB 1718, the Court promulgated statewide standards for electronic filing on July 1, 2009.[13] The Court specified that electronic filing would be implemented through "a single statewide Internet portal for electronic access to and transmission of court records to and from all Florida courts."[14] All electronic filing systems were required to be compatible with the Florida Courts E-Portal.[15] The Court specified that electronic court records submitted to the portal must be "capable of being printed as paper, or transferred to archival media, without loss of content or material alteration of appearance."[16] Such records will constitute the official record and be equivalent to court records filed in paper.[17]

E-Portal

As noted above, FACC began development of an E-Portal in 2007. The development of the E-Portal was completed in the fall of 2009.[18] Currently, E-Portal provides e-filing and e-recording capability to users with a single statewide login. Users may utilize the E-Portal web interface to submit documents to clerks and recorders. The E-Portal also supports automated interfaces with other submitter systems and supports transmissions to and from the local case and recording systems using national XML standards. The E-Portal also provides electronic notifications and service on behalf of filers.[19]

Status of Implementation

Proviso language from the fiscal year 2010-11 General Appropriations Act, required the state courts system to "accelerate the implementation of the electronic filing requirements of section 16 of chapter 2009-61, Laws of Florida, by implementing five of the ten trial court divisions by January 1, 2011."[20]

The E-Portal is currently functional, with nine counties signed on for the initial program.[21] Clerks in these counties are currently working with volunteer attorneys to use the portal on a pilot basis before the portal opens to all attorneys.[22] A second set of counties was recently approved to be added over time.[23] By motion of the Florida E-filing Authority, an entity made up of eight circuit court clerks and the clerk of the Florida Supreme Court provides governance for the e-filing portal.[24] The portal is currently programmed for the following five civil divisions: circuit civil, county civil, family, probate, and juvenile dependency.[25]

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[12] *Id.*

[13] Supreme Court of Florida. *Statewide Standards for Electronic Access to the Courts,* Administrative Order AOSC09-30, (Fla. July 1, 2009). (http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-30.pdf) (last accessed March 17, 2011).

[14] *Id.*

[15] *Id.*

[16] Florida Supreme Court, *Standards for Electronic Access to the Courts*, (June 2009). (http://www.flcourts.org/gen_public/technology/bin/Standards-ElectronicAccess.pdf) (last accessed March 17, 2011).

[17] *Id.*

[18] Florida Clerks of Court Operations Corporation, *E-filing Implementation: Status Report of E-filing Implementation By Florida Clerks Of The Circuit Court* (March 1, 2010). (www.flccoc.org/reportsforms/CCOCEFilingReport.pdf) (last accessed March 18, 2011).

[19] http://www.flclerks.com/eFiling_faq.html (last accessed March 18, 2011).

[20] s. 7 ch. 2010-152, L.O.F., proviso accompany specific appropriation 3238.

[21] The nine counties currently signed on to use the e-filing program are: Lake, Columbia, Duval, Gulf, Holmes, Lee, Miami-Dade, Putnam, and Walton. Gary Blankenship, *E-filing open for business: The new service is being phased in slowly*, THE FLORIDA BAR NEWS, Jan. 15, 2011. (http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/0a29309ae461bfdc85257810006684b5!OpenDocument) (last accessed March 17, 2011).

[22] *E-filing is underway*, THE FLORIDA BAR NEWS, Feb. 1, 2011. (http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/a3867c4f16e4e48c852578220047644a!OpenDocument) (last accessed March 17, 2011).

[23] New counties are: Broward, Orange, Marion, Collier, Franklin, Jackson, and Leon. *Id.*

[24] Florida E-filing Authority, *E-filing Authority Home*, http://www.flclerks.com/eFiling_authority.html (last accessed March 17, 2011).

[25] Minutes from the Florida E-filing Authority meeting (Dec. 8, 2010) (on file with House Criminal Justice Subcommittee staff).

Although the portal is not yet programmed for e-filing for criminal divisions, as of March 4, 2011, 28 counties have been granted approval by the Florida Courts Technology Commission[26] to implement e-filing in criminal divisions, and an additional six counties have applied and are pending approval.[27] Some of these counties have requested approval for e-filing in criminal divisions for systems they are currently using on the local level, while others may have requested approval in anticipation of the statewide portal's expansion into all divisions.

Other Electronic Filing Efforts

Distinct from the statewide portal, there have been other e-filing efforts in Florida for several years. For example, the Manatee County Clerk of Court received approval from the Florida Supreme Court in 2005 to utilize e-filing in all cases.[28] E-filing is mandatory in Manatee County for foreclosure actions and is encouraged for other actions.[29] On the appellate level, the First District Court of Appeal (First DCA) began implementing an e-filing program in 2009 at the direction of the Legislature.[30]

When the program first began, attorneys had the option of filing documents electronically or in paper. However, effective September 1, 2010, all attorneys were required and non-attorneys were encouraged to file all pleadings electronically.[31] The Public Defender for the Second Judicial Circuit handles appeals in the jurisdiction of the First DCA;[32] attorneys in the appellate division currently file electronically in accordance with the court's requirements.

Effect of the Bill

CS/HB 443 creates ss. 27.341 and 27.5112, F.S., which are both entitled, "Electronic filing and receipt of court documents." The bill requires that offices of the state attorney and the public defender electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court.

The bill specifies that electronic filing and receipt of court documents is expected by the Legislature to:

- Reduce costs for the offices of the state attorney and the public defender, the clerk of court, and the judiciary;
- Increase timeliness in the processing of cases; and
- Provide the judiciary and the clerk of court with case-related information to allow for improved judicial case management.

The bill further expresses the expectation of the Legislature that each office of the state attorney and the public defender within the same circuit, consult with each other as well as with the clerks of the court for the circuit, the Florida Court Technology Commission, and any authority that governs the operation of a statewide portal for the electronic filing and receipt of court documents.

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[26] The Florida Courts Technology Commission has been tasked with evaluating electronic filing applications "to determine whether they comply with the technology policies established by the supreme court." *In Re: Amendments to the Florida Rules of Judicial Administration—Rule 2.236*, 41 So. 3d 128,133 (Fla. 2010). (http://www.floridasupremecourt.org/decisions/2010/sc10-241.pdf) (last accessed March 17, 2011).

[27] Counties granted approval for at least one criminal division: Alachua, Broward, Calhoun, Clay, Dixie, Duval, Flagler, Gadsden, Glades, Gulf, Holmes, Jackson, Lake, Lee, Leon, Manatee, Monroe, Okaloosa, Orange, Palm Beach, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, and Volusia; counties pending approval for at least one criminal division: Bay, Brevard, Citrus, Pinellas, Sumter, and Taylor. Florida State Courts, *Electronic Initiatives as of January 21, 2011*, http://www.flcourts.org/gen_public/technology/bin/efilingchart.pdf (last accessed March 17, 2011).

[28] Manatee County Clerk of the Circuit Court, *E-File and E-Case Initiation*, http://www.manateeclerk.com/Services/EFiling.aspx (last accessed March 17, 2011).

[29] *Id.*

[30] Section 17, Ch. 2009-61, L.O.F.

[31] *In Re: Electronic Filing of Pleadings in the First District Court of Appeal,* AO10-3 (Fla. 1st DCA 2010) (http://www.1dca.org/orders/10-3.pdf) (last assessed March 17, 2011).

[32] Florida State Courts, *Florida's District Courts*, http://www.flcourts.org/courts/dca/dca.shtml (last accessed March 17, 2011).

The bill defines the term "court documents" to include pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

The bill also requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, on the progress made to use the Florida Courts E-Portal, or other clerks' offices portals for purposes of electronic filing and receipt of court documents. State attorney and public defender offices that have not fully implemented an electronic filing and receipt system by March 1, 2012, must include in the report a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.

B. SECTION DIRECTORY:

Section 1. Creates s. 27.341, F.S., relating to electronic filing and receipt of court documents.

Section 2. Creates s. 27.5112, F.S., relating to electronic filing and receipt of court documents.

Section 3. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   Counties are required by Article V, Section 14 of the Florida Constitution to fund the cost of communications services for public defenders' offices and state attorneys' offices. The Legislature by general law has prescribed that communications services include "all computer networks, systems and equipment."[33]

   The bill requires that offices of the state attorney and of the public defender electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court. Therefore, counties would be required to provide any funds associated with implementation of the electronic filing process. However, some State Attorneys and Public Defenders have begun implementing electronic filing.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill expresses the legislative expectation that once electronic filing is implemented, it will reduce costs associated with paper filing, increase timeliness in the processing of cases, and provide the

[33] Section 29.008(2)(f), F.S.

judiciary and the clerk of court with case-related information to allow for improved judicial case management.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Counties are required by Article V, Section 14 of the Florida Constitution to fund the cost of communications services for public defenders' offices and state attorneys' offices. The Legislature by general law has prescribed that communications services include "all computer networks, systems and equipment."[34]

To the extent that counties are obligated to fund the cost associated with the implementation of the electronic filing process required by the bill, the bill could constitute a mandate as defined in Article VII, Section 18 of the Florida Constitution for which no funding source is provided.

Laws that have an insignificant fiscal impact are exempt from the requirements of Article VII, Section 18 of the Florida Constitution. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on Florida's estimated population on April 1, 2010,[35] a bill that has a statewide fiscal impact on counties and municipalities in aggregate or in excess of $1.87 million would be characterized as a mandate.

It is unknown at this time how much counties would be required to spend on the electronic filing requirements of the bill. If the fiscal impact is less than $1.87 million, the impact is insignificant, and an exemption to the mandates provision exists.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment:

- Requires the offices of the state attorney and of the public defender to electronically file court documents with the clerk of the court and to electronically receive court documents from the clerk of the court.

- Expresses the expectation of the Legislature that each office of the state attorney and the public defender consult with specified entities in implementing the bill's electronic filing and receipt of court documents requirement.

- Requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to report to the President of the Senate and the Speaker of the House of

[34] Section 29.008(2)(f), F.S.
[35] http://edr.state.fl.us/Content/population-demographics/reports/econographicnews-2010v1a.pdf

Representatives by March 1, 2012, on the progress made to use the Florida Courts E-Portal, or other clerks' offices portals for purposes of electronic filing and receipt of court documents.

This analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to electronic filing and receipt of court documents; creating ss. 27.341 and 27.5112, F.S.; requiring each state attorney and public defender to electronically file court documents with the clerk of the court and receive court documents from the clerk of the court; defining the term "court documents"; providing legislative expectations that the state attorneys and public defenders consult with specified entities; requiring the Florida Prosecuting Attorneys Association and the Florida Public Defender Association report to the President of the Senate and the Speaker of the House of Representatives by a specified date on the progress made to use the Florida Courts E-Portal system or the clerks' offices portals to electronically file and receive court documents; providing an effective date.

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

Section 1. Section 27.341, Florida Statutes, is created to read:

27.341 Electronic filing and receipt of court documents.—

(1)(a) Each office of the state attorney shall electronically file court documents with the clerk of the court and receive court documents from the clerk of the court. It is the expectation of the Legislature that the electronic filing and receipt of court documents will reduce costs for the office of the state attorney, the clerk of the court, and the

judiciary; will increase timeliness in the processing of cases; and will provide the judiciary and the clerk of the court with case-related information to allow for improved judicial case management.

(b) As used in this section, the term "court documents" includes, but is not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

(2) It is further the expectation of the Legislature that each office of the state attorney consult with the office of the public defender for the same circuit served by the office of the state attorney, the clerks of court for the circuit, the Florida Court Technology Commission, and any authority that governs the operation of a statewide portal for the electronic filing and receipt of court documents.

(3) The Florida Prosecuting Attorneys Association shall file a report with the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the progress that each office of the state attorney has made to use the Florida Courts E-Portal or, if the case type is not approved for the Florida Courts E-Portal, separate clerks' offices portals for purposes of electronic filing and documenting receipt of court documents. For any office of the state attorney that has not fully implemented an electronic filing and receipt system by March 1, 2012, the report must also include a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.

Section 2. Section 27.5112, Florida Statutes, is created to read:

27.5112 Electronic filing and receipt of court documents.—

(1)(a) Each office of the public defender shall electronically file court documents with the clerk of the court and receive court documents from the clerk of the court. It is the expectation of the Legislature that the electronic filing and receipt of court documents will reduce costs for the office of the public defender, the clerk of the court, and the judiciary; will increase timeliness in the processing of cases; and will provide the judiciary and the clerk of the court with case-related information to allow for improved judicial case management.

(b) As used in this section, the term "court documents" includes, but is not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

(2) It is further the expectation of the Legislature that, in developing the capability and implementing the process, each office of the public defender consult with the office of the state attorney for the same circuit served by the office of the public defender, the clerks of court for the circuit, the Florida Court Technology Commission, and any authority that governs the operation of a statewide portal for the electronic filing and receipt of court documents.

(3) The Florida Public Defender Association shall file a report with the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the

progress that each office of the public defender has made to use the Florida Courts E-Portal or, if the case type is not approved for the Florida Courts E-Portal, separate clerks' offices portals for purposes of electronic filing and documenting receipt of court documents. For any office of the public defender that has not fully implemented an electronic filing and receipt system by March 1, 2012, the report must also include a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.

Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 575 Violations Of Probation or Community Control
SPONSOR(S): Criminal Justice Subcommittee; Caldwell and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee		Toms	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 948.03, F.S., contains a standard condition requiring probationers to live without violating the law. Thus, if a person on probation is arrested for a new criminal offense, that person can also be arrested for violating the terms of probation. Section 948.06, F.S., sets forth two ways in which a probationer can be arrested for violating probation:

- Whenever there are reasonable grounds to believe that a probationer has violated his or her probation in a material respect, a law enforcement officer who is aware of the probationary status of the probationer or a probation supervisor may arrest the probationer without a warrant and return him or her to the court granting such probation.

- A probation officer may file an affidavit with the court alleging a violation of probation. After the court evaluates the facts alleged in the affidavit, the court may issue a warrant for the probationer's arrest or in some instances, a notice to appear.

The bill provides a third way in which a probationer can be arrested for violating probation:

- The court may order the arrest of a probationer pursuant to the court's finding of probable cause that the probationer has committed a new law violation and that there exist reasonable grounds to believe that the probationer or offender has therefore violated his or her probation in a material respect.

The bill also allows the court to consider the likelihood of a prison sanction on the violation of probation based on the new law violation as a factor in determining bail.

The bill does not appear to have a fiscal impact, see "Fiscal Comments" section.

The effective date is October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Probation

Section 948.01, F.S., provides the circumstances under which the trial court can place a person on probation[1] or community control[2] (probation). Any person who is found guilty by a jury, the court sitting without a jury, or enters a plea of guilty or nolo contendre may be placed on probation regardless of whether adjudication is withheld.[3]

The Department of Corrections supervises all probationers sentenced in circuit court.[4] Section 948.03, F.S., provides a list of standard conditions of probation. In addition to the standard conditions of probation, the court may add additional conditions of probation that it deems proper.[5]

Section 948.06, F.S., provides procedures regarding violation of the terms and conditions required of a person on probation. Upon violation, the probationer is arrested and brought before the sentencing court. At the first hearing on the violation, the probationer is advised of the charge. If the probationer admits the charge, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.[6]

If the probationer denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation.[7] Unless dismissed, the court must conduct a hearing and determine whether the probationer has violated the terms of his or her probation.[8] If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.[9]

If probation is revoked, the court must adjudicate the probationer guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed for the offense for which the probationer was placed on probation or into community control.

Probation Violations – Bail

As noted above, probationers arrested for violating the terms and conditions of probation are arrested and brought before the sentencing court. Generally, if the probationer denies having violated the terms of probation, the court has the option to commit the probationer to jail, release the probationer with or without bail to await further hearing, or dismiss the charge.

In certain instances, courts are limited or prohibited from granting bail to probationers arrested for violating their terms of probation. Section 948.06(4), F.S., requires the court to make a finding that the following probationers are not a danger to the public before releasing the probationer on bail:

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[1] Section 948.001(5), F.S., defines "probation" as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

[2] Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

[3] Section 948.01(1), F.S.

[4] *Id.*

[5] Section 948.03(2), F.S.

[6] Section 948.06(2)(a), F.S.

[7] Section 948.06(2)(c), F.S.

[8] Section 948.06(2)(d), F.S.

[9] Section 948.06(2)(e), F.S.

- Probationers who are under supervision for any offense prescribed in ch. 794., s. 800.04(4), (5), and (6), s. 827.071, or s. 847.0145, F.S.
- Probationers who are registered sexual offenders or sexual predators.
- Probationers who are under supervision for a criminal offense for which the offender would meet the sexual predator or sexual offender registration requirements in ss. 775.21, 943.0435, or 944.607, F.S., but for the effective date of those sections.

Courts are prohibited from granting pretrial release to probationers arrested for violating their terms of supervision (other than violations related to a failure to pay costs) who are:

- A violent felony offender of special concern;[10]
- On supervision for any offense committed on or after March 12, 2007, and who are arrested for any qualifying offense;[11] or
- On supervision, have previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., a three-time violent felony offender as defined in s. 775.084(1)(c), F.S., or a sexual predator under s. 775.21, F.S., and who have been arrested for committing a qualifying offense on or after March 12, 2007.[12,13]

Such persons must remain in custody pending the resolution of the violation.[14]

New Law Violations
Section 948.03, F.S., contains a standard condition requiring probationers to live without violating the law. Thus, if a person on probation is arrested for a new criminal offense, that person can also be arrested for violating the terms of probation.

Two separate and distinct court cases are initiated when a probationer is arrested for committing a new offense. The first case (new offense case) involves the new offense that the probationer is alleged to have committed. The second case (VOP case) involves the violation of probation that the probationer is alleged to have committed. In most instances, the new offense case is initiated, and later, once the probationer's supervising officer is made aware that the probationer was arrested for committing a new crime, the VOP case is initiated.

As noted above, a judge handling a probationer's VOP case has the option of granting bail to a probationer arrested for violating the terms of probation (unless the probationer meets the criteria outlined above.) The judge handling the new offense case also has the option of granting bail to the probationer. In determining whether to grant such bail and what the bail amount should be, judges are permitted to consider a variety of factors, including whether the defendant is on probation, parole, or other release pending completion of a sentence.[15]

Authority to Arrest a Probationer for a Probation Violation
Section 948.06, F.S., sets forth two ways in which a probationer can be arrested for violating probation.

- Whenever there are reasonable grounds to believe that a probationer has violated his or her probation in a material respect, a law enforcement officer who is aware of the probationary status of the probationer or a probation supervisor may arrest the probationer without a warrant and return him or her to the court granting such probation.

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[10] The term "violent felony offender of special concern" is defined in s. 948.06(8)(b), F.S.
[11] The term "qualifying offense" is defined in s. 948.06(8)(c), F.S., and includes offenses that qualify someone as a sexual offender.
[12] Section 903.0351(2), F.S., provides that subsection (1) shall not apply where the alleged violation of felony probation or community control is based only on the probationer's failure to pay costs or fines or make restitution payments.
[13] Section 903.0351(1), F.S.
[14] Section 948.06(8)(d), F.S.
[15] Section 903.046, F.S.

- Alternatively, a probation officer may file an affidavit with the court alleging a violation of probation. After the court evaluates the facts alleged in the affidavit, the court may issue a warrant for the probationer's arrest or in some instances, a notice to appear.

Effect of the Bill

The bill amends s. 948.06, F.S., to provide a third way in which a probationer can be arrested for violating probation:

- The court may order the arrest of a probationer pursuant to the court's finding of probable cause that the probationer has committed a new law violation and that there exist reasonable grounds to believe that the probationer has therefore violated his or her probation in a material respect.

The bill requires the court to advise the probationer of the charge of the violation upon arrest and at first appearance on the violation and may order the probationer to be brought before the court that granted the probation.

However, if the violation is not admitted, the court may commit the probationer or release him or her with or without bail to await further hearing. Current law contains similar provisions.[16] The court may also order the probationer to be returned to the court granting such supervision.

The bill allows the court to consider whether the person will receive a prison sanction for violating the terms of probation based on the arrest for the new violation of law during bail determination on the violation. This provision is similar to what is already allowed by current law.[17]

The bill specifies that its provisions do not apply to a probationer or offender on community control who is subject to the hearing requirements under subsection 948.06(4) or paragraph 948.06(8)(e), F.S.

B. SECTION DIRECTORY:

Section 1.Provides this act may be cited as the "Officer Andrew Widman Act."

Section 2. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 3. Provides effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Insignificant impact, see "Fiscal Comments."

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[16] These provisions are described above in "Background – Probation."

[17] *See* Section 903.046, F.S., which provides that the court may consider the defendant's past or present conduct and record of convictions in determining the bail amount for the new criminal offense.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of State Courts Administrator's analysis of this bill states will not have a significant impact on the State Courts System.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment clarifies the language and intent of the bill.

This analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to violations of probation or community control; creating the "Officer Andrew Widman Act"; amending s. 948.06, F.S.; authorizing a judge, after making a certain finding, to issue a warrant for the arrest of a probationer or offender who has violated the terms of probation or community control; requiring that the court inform the probationer or offender of the violation; authorizing the court to commit or release the probationer or offender under certain circumstances; authorizing the court, in determining whether to require or set the amount of bail, to consider the likelihood that the person will be imprisoned for the violation of probation or community control; providing an effective date.

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

Section 1. This act may be cited as the "Officer Andrew Widman Act."

Section 2. Subsection (1) of section 948.06, Florida Statutes, is amended to read:

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

(1)(a) Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer or offender in community control has violated his or

her probation or community control in a material respect, any law enforcement officer who is aware of the probationary or community control status of the probationer or offender in community control or any parole or probation supervisor may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant wherever found and return him or her to the court granting such probation or community control.

(b) Any committing trial court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the probationer or offender, returnable forthwith before the court granting such probation or community control. In lieu of issuing a warrant for arrest, the committing trial court judge may issue a notice to appear if the probationer or offender in community control has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as defined in this section.

(c) If a judge finds reasonable grounds to believe that a probationer or an offender has violated his or her probation or community control in a material respect by committing a new violation of law, the judge may issue a warrant for the arrest of the person.

(d)1. At a first appearance hearing for an offender who has been arrested for violating his or her probation or community control in a material respect by committing a new violation of law, the court:

a. Shall inform the person of the violation.

b. May order the person to be taken before the court that granted the probation or community control if the person admits the violation.

2. If the probationer or offender does not admit the violation at the first appearance hearing, the court:

a. May commit the probationer or offender or may release the person with or without bail to await further hearing, notwithstanding s. 907.041; or

b. May order the probationer or offender to be brought before the court that granted the probation or community control.

3. In determining whether to require or set the amount of bail, and notwithstanding s. 907.041, the court may consider whether the probationer or offender is more likely than not to receive a prison sanction for the violation.

This paragraph does not apply to a probationer or offender on community control who is subject to the hearing requirements of subsection (4) or paragraph (8)(e).

(e) ~~(c)~~ Any parole or probation supervisor, any officer authorized to serve criminal process, or any peace officer of this state is authorized to serve and execute such warrant. Any parole or probation supervisor is authorized to serve such notice to appear.

(f) ~~(d)~~ Upon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant under s. 901.02, a warrantless arrest under this section, or a notice to appear under this section,

the probationary period is tolled until the court enters a ruling on the violation. Notwithstanding the tolling of probation, the court shall retain jurisdiction over the offender for any violation of the conditions of probation or community control that is alleged to have occurred during the tolling period. The probation officer is permitted to continue to supervise any offender who remains available to the officer for supervision until the supervision expires pursuant to the order of probation or community control or until the court revokes or terminates the probation or community control, whichever comes first.

(g) ~~(e)~~ The chief judge of each judicial circuit may direct the department to use a notification letter of a technical violation in appropriate cases in lieu of a violation report, affidavit, and warrant when the alleged violation is not a new felony or misdemeanor offense. Such direction must be in writing and must specify the types of specific violations which are to be reported by a notification letter of a technical violation, any exceptions to those violations, and the required process for submission. At the direction of the chief judge, the department shall send the notification letter of a technical violation to the court.

(h) ~~(f)~~ The court may allow the department to file an affidavit, notification letter, violation report, or other report under this section by facsimile or electronic submission.

Section 3. This act shall take effect October 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4035 Misdemeanor Pretrial Substance Abuse Programs
SPONSOR(S): Waldman and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 104

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 1 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, F.S., and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

HB 4035 expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

This may have a positive fiscal impact on local governments because persons who successfully complete such programs have their criminal charges dismissed and may not be sentenced to time in local jails. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate.

This bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S.,[1] and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program,[2] for a period based on the program requirements and the treatment plan for the offender. Admission to such a program may be based upon the motion of either party or the court's own motion.[3]

Participants in the program are subject to a coordinated strategy[4] developed by a drug court team under s. 397.334(4), F.S., which may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.[5]

At the end of the pretrial intervention period, the court must:

- Consider the recommendation of the treatment program;
- Consider the recommendation of the state attorney as to disposition of the pending charges; and
- Determine, by written finding, whether the defendant successfully completed the pretrial intervention program.[6]

If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution.[7] The court must dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.[8]

Effect of the Bill

As noted above, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not previously been convicted of a felony *nor been admitted to a pretrial program*, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

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[1] Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act.

[2] Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs and sets criteria for such programs.

[3] Admission may be based upon motion of either party or the court except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program. s. 948.16(10(a), F.S.

[4] The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. s. 948.16(1)(b), F.S.

[5] Section 948.16(1)(b), F.S.

[6] Section 948.16(2), F.S.

[7] *Id.*

[8] Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S. *See* Section 948.16(1)(b), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program.

Section 2. This bill takes effect July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. There may be a positive fiscal impact on treatment providers if more people are eligible to participate in such programs.

D. FISCAL COMMENTS:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. Persons who successfully complete such programs have their criminal charges dismissed and may not be sentenced to time in local jails. This may have a positive fiscal impact on local governments. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to misdemeanor pretrial substance abuse programs; amending s. 948.16, F.S.; providing that a person who has previously been admitted to a pretrial program may still qualify for voluntary admission to a program; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.—

(1)(a) A person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, and who has not previously been convicted of a felony ~~nor been admitted to a pretrial program~~, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own motion, except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the

defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

Section 2. This act shall take effect July 1, 2011.