

HB 799 – Criminal Sentencing

This bill amends multiple statutes. First, it amends s. 921.0024, F.S. regarding sentencing points for community sanction violations, stating that “if the community sanction violation is resolved through the alternative sanction program under s. 948.03, F.S., no points are assessed. If a community sanction violation not resolved through the alternative sanction program is before the court, no points are assessed for prior violations that were resolved through the alternative sanction program.” Furthermore, it adds that for sentencing in general, “when the total sentence points exceeds 44 points but is less than 108 points and the court imposes a split sentence pursuant to s. 948.012, F.S., probation months imposed as part of the split sentence count toward the lowest permissible sentence up to the lesser of 24 months or one half of the lowest permissible sentence.”

It also amends s. 948.06, F.S., adding that “if the probationer or offender on community control is eligible for the alternative sanctioning program and the violation is a low-risk violation, as defined in paragraph (9)(b), the probation officer shall proceed with the alternative sanctioning program in lieu of filing an affidavit of violation with the court unless directed by the court to submit or file an affidavit of violation pursuant to paragraph (9)(h).” This creates a situation where the officer’s discretion on the alternative sanctioning program does not apply. Furthermore, technical violation under the section expands the wording that it is not a new felony offense to include a list of misdemeanors that also do not apply. Therefore, while it might serve to divert more technical violators from prison with mandatory instances of alternative sanctioning, it also prevents alternative sanctioning for more misdemeanors than current language specifies.

Additionally, it clarifies earlier language for when a court shall modify or continue a probationary term upon finding a probationer in violation, stating that all circumstances listed must apply (current language says “any”). While this might make it more difficult to keep technical violators from incarceration, courts have generally applied the intent that all circumstances listed must apply. At the same time, it amends this list to state in bold that “the court has not, **on two or more separate occasions**, previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision.” It also gives an additional jail sentence as an option for the courts. These other changes to the language would provide options other than prison.

Per DOC, there are thousands of prisoners admitted each year that could be eligible for the new language impacting split sentences. Furthermore, there were 5,962 technical violators sentenced to prison in FY 18-19, and 4,028 sentenced to prison in FY 19-20 that might be eligible for the alternative sanctioning program under the new language.

While it is not known how many of these potentially eligible offenders would be impacted by the new language, the large numbers in the potentially eligible groups would likely lead to a significant impact on prison beds.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

Requested by: House