

## **Violation of Probation (VOP)**

You may be placed on probation at the conclusion of your case. If you are on probation for a misdemeanor your probationary period may last from six (6) to twelve (12) months. If you are on probation for a felony, depending on the degree, you may be placed on probation for periods lasting five (5) years for a third degree felony, fifteen years (15) for a second degree felony, or thirty (30) years for a first degree felony.

In each case, the Court may impose a series of conditions specific to that charge. It is the responsibility of the probationer to follow the conditions of his or her probation. It is also the responsibility of the probationer to refrain from committing new law violations during their period of probation. Specifically, the probationer cannot commit a new criminal offense. The failure to follow the conditions of probation or the commission of a new crime may subject the probationer to a violation of probation. The following is the Florida statute with respect to Violations of Probation.

### **§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) 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.

(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.

(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.

(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.

(2)(a) The court, upon the probationer or offender being brought before it, shall advise him or her of such charge of violation and, if such charge is admitted to be true, may forthwith revoke, modify, or continue the probation or community control or place the probationer into a community control program.

(b) If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation or the offender into community control.

(c) If such violation of probation or community control is not admitted by the probationer or offender, the court may commit him or her or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation.

(d) If such charge is not at that time admitted by the probationer or offender and if it is not dismissed, the court, as soon as may be practicable, shall give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel.

(e) After such hearing, the court may revoke, modify, or continue the probation or community control or place the probationer into community control. If such probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer or offender on probation or into community control.

(f) Notwithstanding s. 775.082, when a period of probation or community control has been tolled, upon revocation or modification of the probation or community control, the court may impose a sanction with a term that when combined with the amount of supervision served and tolled, exceeds the term permissible pursuant to s. 775.082 for a term up to the amount of the tolled period of supervision.

(g) If the court dismisses an affidavit alleging a violation of probation or community control, the offender's probation or community control shall continue as previously imposed, and the offender shall receive credit for all tolled time against his or her term of probation or community control.

(h)1. For each case in which the offender admits to committing a violation or is found to have committed a violation, the department shall provide the court with a recommendation as to disposition by the court. The department shall provide the reasons for its recommendation and include an evaluation of:

a. The appropriateness or inappropriateness of community facilities, programs, or services for treating or supervising the offender;

b. The ability or inability of the department to provide an adequate level of supervision of the offender in the community and a statement of what constitutes an adequate level of supervision; and

c. The existence of treatment modalities that the offender could use but that do not currently exist in the community.

2. The report must also include a summary of the offender's prior supervision history, including the offender's prior participation in treatment, educational, and vocational programs, and any other actions by or circumstances concerning the offender which are relevant.

3. The court may specify whether the recommendation or report must be oral or written and may waive the requirement for a report in an individual case or a class of cases. This paragraph does not prohibit the

department from making any other report or recommendation that is provided for by law or requested by the court.

(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 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.

(3) When the court imposes a subsequent term of supervision following a revocation of probation or community control, it shall not provide credit for time served while on probation or community control toward any subsequent term of probation or community control. However, the court may not impose a subsequent term of probation or community control which, when combined with any amount of time served on preceding terms of probation or community control for offenses before the court for sentencing, would exceed the maximum penalty allowable as provided by s. 775.082. No part of the time that the defendant is on probation or in community control shall be considered as any part of the time that he or she shall be sentenced to serve.

(4) Notwithstanding any other provision of this section, a felony probationer or an offender in community control who is arrested for violating his or her probation or community control in a material respect may be taken before the court in the county or circuit in which the probationer or offender was arrested. That court shall advise him or her of the charge of a violation and, if such charge is admitted, shall cause him or her to be brought before the court that granted the probation or community control. If the violation is not admitted by the probationer or offender, the court may commit him or her or release him or her with or without bail to await further hearing. However, if the probationer or offender is under supervision for any criminal offense proscribed in chapter 794, s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a registered sexual predator or a registered sexual offender, or is under supervision for a criminal offense for which he or she would meet the registration criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the effective date of those sections, the court must make a finding that the probationer or offender is not a danger to the public prior to release with or without bail. In determining the danger posed by the offender's or probationer's release, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender's or probationer's past and present conduct, including convictions of crimes; any record of arrests without conviction for crimes involving violence or sexual crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the

offender or probationer; the offender's or probationer's family ties, length of residence in the community, employment history, and mental condition; his or her history and conduct during the probation or community control supervision from which the violation arises and any other previous supervisions, including disciplinary records of previous incarcerations; the likelihood that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant. The court, as soon as is practicable, shall give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel. After the hearing, the court shall make findings of fact and forward the findings to the court that granted the probation or community control and to the probationer or offender or his or her attorney. The findings of fact by the hearing court are binding on the court that granted the probation or community control. Upon the probationer or offender being brought before it, the court that granted the probation or community control may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in this section. However, the probationer or offender shall not be released and shall not be admitted to bail, but shall be brought before the court that granted the probation or community control if any violation of felony probation or community control other than a failure to pay costs or fines or make restitution payments is alleged to have been committed by:

(a) A violent felony offender of special concern, as defined in this section;

(b) A person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense as defined in this section; or

(c) A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in this section on or after the effective date of this act.

(5) In any hearing in which the failure of a probationer or offender in community control to pay restitution or the cost of supervision as provided in s. 948.09, as directed, is established by the state, if the probationer or offender asserts his or her inability to pay restitution or the cost of supervision, it is incumbent upon the probationer or offender to prove by clear and convincing evidence that he or she does not have the present resources available to pay restitution or the cost of supervision despite sufficient bona fide efforts legally to acquire the resources to do so. If the probationer or offender cannot pay restitution or the cost of supervision despite sufficient bona fide efforts, the court shall consider alternate measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the state's interests in punishment and deterrence may the court imprison a probationer or offender in community control who has demonstrated sufficient bona fide efforts to pay restitution or the cost of supervision.

(6) Any parolee in a community control program who has allegedly violated the terms and conditions of such placement is subject to the provisions of ss. 947.22 and 947.23.

(7) Any provision of law to the contrary notwithstanding, whenever probation, community control, or control release, including the probationary, community control portion of a split sentence, is violated and the probation or community control is revoked, the offender, by reason of his or her misconduct, shall be deemed to have forfeited all gain-time or commutation of time for good conduct, as provided by law, earned up to the date of his or her release on probation, community control, or control release. This subsection does not deprive the prisoner of his or her right to gain-time or commutation of time for good conduct, as provided by law, from the date on which the prisoner is returned to prison. However, if a prisoner is sentenced to incarceration following termination from a drug punishment program imposed as a condition of probation, the sentence may include incarceration without the possibility of gain-time or early release for the period of time remaining in his or her treatment program placement term.

(8)(a) In addition to complying with the provisions of subsections (1)-(7), this subsection provides further requirements regarding a probationer or offender in community control who is a violent felony offender of special concern. The provisions of this subsection shall control over any conflicting provisions in subsections (1)-(7). For purposes of this subsection, the term "convicted" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(b) For purposes of this section and ss. 903.0351, 948.064, and 921.0024, the term "violent felony offender of special concern" means a person who is on:

1. Felony probation or community control related to the commission of a qualifying offense committed on or after the effective date of this act;
2. Felony probation or community control for any offense committed on or after the effective date of this act, and has previously been convicted of a qualifying offense;
3. Felony probation or community control for any offense committed on or after the effective date of this act, and is found to have violated that probation or community control by committing a qualifying offense;
4. Felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b) and has committed a qualifying offense on or after the effective date of this act;
5. Felony probation or community control and has previously been found by a court to be a three-time violent felony offender as defined in s. 775.084(1)(c) and has committed a qualifying offense on or after the effective date of this act; or
6. Felony probation or community control and has previously been found by a court to be a sexual predator under s. 775.21 and has committed a qualifying offense on or after the effective date of this act.

(c) For purposes of this section, the term "qualifying offense" means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025(2)(b) or (c).
2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.
3. Aggravated battery or attempted aggravated battery under s. 784.045.
4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c).
5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious conduct under s. 800.04(6)(b), lewd or lascivious exhibition under s. 800.04(7)(b), or lewd or lascivious exhibition on computer under s. 847.0135(5)(b).
6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.
7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.
8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.
9. Computer pornography under s. 847.0135(2) or (3), transmission of child pornography under s. 847.0137, or selling or buying of minors under s. 847.0145.
10. Poisoning food or water under s. 859.01.

11. Abuse of a dead human body under s. 872.06.
12. Any burglary offense or attempted burglary offense that is either a first degree felony or second degree felony under s. 810.02(2) or (3).
13. Arson or attempted arson under s. 806.01(1).
14. Aggravated assault under s. 784.021.
15. Aggravated stalking under s. 784.048(3), (4), (5), or (7).
16. Aircraft piracy under s. 860.16.
17. Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4).
18. Treason under s. 876.32.
19. Any offense committed in another jurisdiction which would be an offense listed in this paragraph if that offense had been committed in this state.

(d) In the case of an alleged violation of probation or community control other than a failure to pay costs, fines, or restitution, the following individuals shall remain in custody pending the resolution of the probation or community control violation:

1. A violent felony offender of special concern, as defined in this section;
2. A person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense as defined in this section; or
3. A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in this section on or after the effective date of this act.

The court shall not dismiss the probation or community control violation warrant pending against an offender enumerated in this paragraph without holding a recorded violation-of-probation hearing at which both the state and the offender are represented.

(e) If the court, after conducting the hearing required by paragraph (d), determines that a violent felony offender of special concern has committed a violation of probation or community control other than a failure to pay costs, fines, or restitution, the court shall:

1. Make written findings as to whether or not the violent felony offender of special concern poses a danger to the community. In determining the danger to the community posed by the offender's release, the court shall base its findings on one or more of the following:
  - a. The nature and circumstances of the violation and any new offenses charged.
  - b. The offender's present conduct, including criminal convictions.
  - c. The offender's amenability to nonincarcerative sanctions based on his or her history and conduct during the probation or community control supervision from which the violation hearing arises and any other previous supervisions, including disciplinary records of previous incarcerations.
  - d. The weight of the evidence against the offender.
  - e. Any other facts the court considers relevant.
2. Decide whether to revoke the probation or community control.

- a. If the court has found that a violent felony offender of special concern poses a danger to the community, the court shall revoke probation and shall sentence the offender up to the statutory maximum, or longer if permitted by law.
- b. If the court has found that a violent felony offender of special concern does not pose a danger to the community, the court may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in this section.

**History.**--s. 26, ch. 20519, 1941; s. 2, ch. 59-130; s. 2, ch. 61-498; s. 1, ch. 69-71; s. 20, ch. 83-131; ss. 2, 3, ch. 84-337; ss. 8, 9, 38, 48, ch. 89-526; s. 13, ch. 89-531; s. 11, ch. 90-287; s. 2, ch. 91-225; s. 8, ch. 91-280; s. 23, ch. 97-78; s. 1687, ch. 97-102; s. 5, ch. 97-239; s. 13, ch. 97-299; s. 3, ch. 2000-246; s. 1, ch. 2001-109; s. 50, ch. 2004-11; ss. 27, 28, 41, ch. 2004-373; s. 13, ch. 2005-28; s. 3, ch. 2007-2; s. 5, ch. 2007-210; s. 29, ch. 2008-172; s. 4, ch. 2009-64.