

By Senator Crist

20-1162-98

See HB

1 A bill to be entitled
2 An act relating to offenders under correctional
3 supervision; amending s. 948.03, F.S., relating
4 to probation and community control; requiring
5 probationers and community controllees on
6 supervision for controlled substance violations
7 or certain firearm offenses to submit to random
8 searches without a warrant; prohibiting a
9 probationer or community controllee from having
10 "contact," as defined, with the victim unless
11 authorized by the court; reenacting s.
12 947.23(6), F.S., relating to action of Parole
13 Commission upon arrest of parolee, s.
14 948.001(5), F.S., relating to definition of
15 "probation" with respect to chapter 948, F.S.,
16 and s. 958.03(4), F.S., relating to definition
17 of "probation" with respect to specified
18 provisions in chapter 958, F.S., to incorporate
19 said amendment in references; amending s.
20 948.06, F.S., relating to violations of
21 probation or community control; authorizing law
22 enforcement officers and probation or community
23 control officers to search without a warrant,
24 or request search without a warrant of, the
25 person, residence, or property of probationers
26 and community controllees under certain
27 circumstances; prohibiting the exclusion or
28 suppression of evidence from trials for
29 subsequent offenses by offenders on probation,
30 community control, or parole, or from hearings
31 for violation of probation, community control,

1 or parole, under certain circumstances when
2 there was reasonable suspicion to believe that
3 at the time of the search the offender violated
4 the law or the terms of probation, community
5 control, or parole; providing an exception with
6 respect to offenders on probation, community
7 control, or parole for substance violations or
8 certain firearms offenses; prohibiting the
9 exclusion or suppression of evidence from
10 hearings for violation of supervision of
11 offenders on probation, community control, or
12 parole for controlled substance violations or
13 certain firearm offenses when such exclusion or
14 suppression is based solely on insufficient
15 suspicion or reason to believe a violation by
16 the offender occurred, under certain
17 circumstances; reenacting s. 948.01(9),
18 (11)(b), and (13)(b), F.S., relating to
19 circumstances when a court may place a
20 defendant on probation or into community
21 control, and s. 958.14, F.S., relating to
22 violation of probation or community control
23 program, to incorporate said amendment in
24 references; providing an effective date.

25
26 WHEREAS, the Legislature finds that over 42 percent of
27 offenders on community supervision with the Department of
28 Corrections have been under such supervision previously and
29 have reoffended, and

30 WHEREAS, the Legislature finds that offenders on
31 community supervision require closer supervision to adequately

1 protect the public from offenders on community supervision,
2 and

3 WHEREAS, the Legislature further finds that, in order
4 to ensure the effectiveness of community supervision programs,
5 it is necessary that officers be given greater authority to
6 search offenders on community supervision to the extent
7 allowed under the United States Constitution as interpreted by
8 the United States Supreme Court, and

9 WHEREAS, in Griffin v. Wisconsin, 483 U.S. 868, 875
10 (1987), the United States Supreme Court noted that recent
11 research suggests that more intensive supervision can reduce
12 recidivism, and that the importance of supervision has grown
13 as probation has become an increasingly common sentence for
14 those convicted of serious crimes, NOW, THEREFORE,

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

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18 Section 1. Subsection (1) of section 948.03, Florida
19 Statutes, is amended to read:

20 948.03 Terms and conditions of probation or community
21 control.--

22 (1) The court shall determine the terms and conditions
23 of probation or community control. Conditions specified in
24 paragraphs (a) through and including (p) ~~(m)~~ do not require
25 oral pronouncement at the time of sentencing and may be
26 considered standard conditions of probation. Conditions
27 specified in paragraphs (a) through and including (p) ~~(m)~~ and
28 (2)(a) do not require oral pronouncement at sentencing and may
29 be considered standard conditions of community control. These
30 conditions may include among them the following, that the
31 probationer or offender in community control shall:

- 1 (a) Report to the probation and parole supervisors as
2 directed.
- 3 (b) Permit such supervisors to visit him or her at his
4 or her home or elsewhere.
- 5 (c) Work faithfully at suitable employment insofar as
6 may be possible.
- 7 (d) Remain within a specified place.
- 8 (e) Make reparation or restitution to the aggrieved
9 party for the damage or loss caused by his or her offense in
10 an amount to be determined by the court. The court shall make
11 such reparation or restitution a condition of probation,
12 unless it determines that clear and compelling reasons exist
13 to the contrary. If the court does not order restitution, or
14 orders restitution of only a portion of the damages, as
15 provided in s. 775.089, it shall state on the record in detail
16 the reasons therefor.
- 17 (f) Effective July 1, 1994, and applicable for
18 offenses committed on or after that date, make payment of the
19 debt due and owing to a county or municipal detention facility
20 under s. 951.032 for medical care, treatment, hospitalization,
21 or transportation received by the felony probationer while in
22 that detention facility. The court, in determining whether to
23 order such repayment and the amount of such repayment, shall
24 consider the amount of the debt, whether there was any fault
25 of the institution for the medical expenses incurred, the
26 financial resources of the felony probationer, the present and
27 potential future financial needs and earning ability of the
28 probationer, and dependents, and other appropriate factors.
- 29 (g) Support his or her legal dependents to the best of
30 his or her ability.
- 31

1 (h) Make payment of the debt due and owing to the
2 state under s. 960.17, subject to modification based on change
3 of circumstances.

4 (i) Pay any application fee assessed under s.
5 27.52(1)(c) and attorney's fees and costs assessed under s.
6 938.29, subject to modification based on change of
7 circumstances.

8 (j) Not associate with persons engaged in criminal
9 activities.

10 (k)1. Submit to random testing as directed by the
11 correctional probation officer or the professional staff of
12 the treatment center where he or she is receiving treatment to
13 determine the presence or use of alcohol or controlled
14 substances.

15 2. If the offense was a controlled substance violation
16 and the period of probation immediately follows a period of
17 incarceration in the state correction system, the conditions
18 shall include a requirement that the offender submit to random
19 substance abuse testing intermittently throughout the term of
20 supervision, upon the direction of the correctional probation
21 officer as defined in s. 943.10(3).

22 (l) Be prohibited from possessing, carrying, or owning
23 any firearm unless authorized by the court and consented to by
24 the probation officer.

25 (m) Be prohibited from using intoxicants to excess or
26 possessing any drugs or narcotics unless prescribed by a
27 physician. The probationer or community controllee shall not
28 knowingly visit places where intoxicants, drugs, or other
29 dangerous substances are unlawfully sold, dispensed, or used.

30 (n) If the offense was a controlled substance
31 violation or an offense involving the possession or use of a

1 firearm, submit to warrantless, random searches of his or her
2 person, property, and residence as requested by the
3 supervising probation officer.

4 (o) For offenses involving victims, not have contact
5 with the victim unless otherwise authorized by the court. If
6 the court authorizes the defendant to have contact with the
7 victim, over the objection of the victim or state attorney,
8 the court shall state on the record in detail the reasons
9 therefor. For purposes of this paragraph, "contact" means
10 being physically in the presence of the victim in any manner
11 which is intentional, or oral or written communication to the
12 victim by any means. Contact is established by the conduct of
13 the defendant, or by anyone acting at the direction of the
14 defendant. It shall be the duty of the defendant to leave
15 immediately the presence of the victim under any circumstance
16 when incidental or unintended contact takes place.

17 (p) Consent to search of his or her person, property,
18 and residence as requested by the supervising probation
19 officer.

20 (q)~~(n)~~ Attend an HIV/AIDS awareness program consisting
21 of a class of not less than 2 hours or more than 4 hours in
22 length, the cost for which shall be paid by the offender, if
23 such a program is available in the county of the offender's
24 residence.

25 (r)~~(o)~~ Pay not more than \$1 per month during the term
26 of probation or community control to a nonprofit organization
27 established for the sole purpose of supplementing the
28 rehabilitative efforts of the Department of Corrections.

29 Section 2. For the purpose of incorporating the
30 amendment made by this act to section 948.03, Florida

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1 Statutes, in a reference thereto, subsection (6) of section
2 947.23, Florida Statutes, is reenacted to read:

3 947.23 Action of commission upon arrest of parolee.--

4 (6) Within a reasonable time after the hearing, the
5 commissioner, commissioners, or duly authorized representative
6 of the commission who conducted the hearing shall make
7 findings of fact in regard to the alleged parole violation.

8 (a) If the hearing was conducted by three or more
9 commissioners, a majority of them shall enter an order
10 determining whether the charges of parole violation have been
11 sustained, based on the findings of fact made by them. By
12 such order they shall revoke the parole and return the parolee
13 to prison to serve the sentence theretofore imposed upon her
14 or him, reinstate the original order of parole, order the
15 placement of the parolee into a community control program as
16 set forth in s. 948.03, or enter such other order as is
17 proper.

18 (b) If the hearing was conducted by one or two
19 commissioners or a duly authorized representative of the
20 commission, at least two commissioners shall enter an order
21 determining whether or not the charges of parole violation
22 have been sustained, based on the findings of fact made by the
23 commissioner, commissioners, or duly authorized representative
24 of the commission. The commissioners, by such order, shall
25 revoke the parole and return the parolee to prison to serve
26 the sentence theretofore imposed upon her or him, reinstate
27 the original order of parole, order the placement of the
28 parolee into a community control program as set forth in s.
29 948.03, or enter such other order as is proper.

30 (c) If the disposition after the revocation hearing is
31 to place the parolee into a community control program, the

1 commission shall be guided by the procedures and requirements
2 provided in chapter 948 which apply to the courts regarding
3 the development and implementation of community control.

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5 However, any decision to revoke parole shall be based on a
6 violation of a term or condition specifically enumerated in
7 the parole release order. In a case in which parole is
8 revoked, the majority of the commission or the two
9 commissioners shall make a written statement of the evidence
10 relied on and the reasons for revoking parole.

11 Section 3. For the purpose of incorporating the
12 amendment made by this act to section 948.03, Florida
13 Statutes, in a reference thereto, subsection (5) of section
14 948.001, Florida Statutes, is reenacted to read:

15 948.001 Definitions.--As used in this chapter, the
16 term:

17 (5) "Probation" means a form of community supervision
18 requiring specified contacts with parole and probation
19 officers and other terms and conditions as provided in s.
20 948.03.

21 Section 4. For the purpose of incorporating the
22 amendment made by this act to section 948.03, Florida
23 Statutes, in a reference thereto, subsection (4) of section
24 958.03, Florida Statutes, is reenacted to read:

25 958.03 Definitions.--As used in this act:

26 (4) "Probation" means a form of community supervision
27 requiring specified contacts with parole and probation
28 officers and other terms and conditions as provided in s.
29 948.03.

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1 Section 5. Subsection (1) of section 948.06, Florida
2 Statutes, is amended, and subsections (8) and (9) are added to
3 said section, to read:

4 948.06 Violation of probation or community control;
5 revocation; modification; continuance; failure to pay
6 restitution or cost of supervision.--

7 (1) Whenever within the period of probation or
8 community control there are reasonable grounds to believe that
9 a probationer or offender in community control has violated
10 his or her probation or community control, any law enforcement
11 officer who is aware of the probationary or community control
12 status of the probationer or offender in community control or
13 any parole or probation supervisor may search without a
14 warrant, or request any county or municipal law enforcement
15 officer to search without a warrant, such probationer or
16 offender or such probationer's or offender's residence or
17 property.Whenever within the period of probation or community
18 control there are reasonable grounds to believe that a
19 probationer or offender in community control has violated his
20 or her probation or community control in a material respect,
21 any law enforcement officer who is aware of the probationary
22 or community control status of the probationer or offender in
23 community control or any parole or probation supervisor may
24 arrest or request any county or municipal law enforcement
25 officer to arrest such probationer or offender without warrant
26 wherever found and forthwith return him or her to the court
27 granting such probation or community control. Any committing
28 magistrate may issue a warrant, upon the facts being made
29 known to him or her by affidavit of one having knowledge of
30 such facts, for the arrest of the probationer or offender,
31 returnable forthwith before the court granting such probation

1 or community control. Any parole or probation supervisor, any
2 officer authorized to serve criminal process, or any peace
3 officer of this state is authorized to serve and execute such
4 warrant. The court, upon the probationer or offender being
5 brought before it, shall advise him or her of such charge of
6 violation and, if such charge is admitted to be true, may
7 forthwith revoke, modify, or continue the probation or
8 community control or place the probationer into a community
9 control program. If probation or community control is revoked,
10 the court shall adjudge the probationer or offender guilty of
11 the offense charged and proven or admitted, unless he or she
12 has previously been adjudged guilty, and impose any sentence
13 which it might have originally imposed before placing the
14 probationer on probation or the offender into community
15 control. If such violation of probation or community control
16 is not admitted by the probationer or offender, the court may
17 commit him or her or release him or her with or without bail
18 to await further hearing, or it may dismiss the charge of
19 probation or community control violation. If such charge is
20 not at that time admitted by the probationer or offender and
21 if it is not dismissed, the court, as soon as may be
22 practicable, shall give the probationer or offender an
23 opportunity to be fully heard on his or her behalf in person
24 or by counsel. After such hearing, the court may revoke,
25 modify, or continue the probation or community control or
26 place the probationer into community control. If such
27 probation or community control is revoked, the court shall
28 adjudge the probationer or offender guilty of the offense
29 charged and proven or admitted, unless he or she has
30 previously been adjudged guilty, and impose any sentence which
31 it might have originally imposed before placing the

1 probationer or offender on probation or into community
2 control.

3 (8) Evidence may not be excluded or suppressed from
4 the trial of a new substantive offense if:

5 (a) The defendant has previously been convicted of a
6 felony;

7 (b) The defendant was on probation or community
8 control at the time of the offense;

9 (c) The defendant was subject to random searches, as a
10 condition of supervision, at the time the search was
11 conducted; and

12 (d) The search was conducted when there was reasonable
13 suspicion to believe that the defendant was in violation of
14 the law or in violation of the terms of probation, community
15 control, or parole.

16 (9) Evidence may not be excluded or suppressed from a
17 hearing for a violation of probation, community control, or
18 parole, if the search was conducted when there was reasonable
19 suspicion to believe that the offender was in violation of the
20 law or in violation of the terms of probation, community
21 control, or parole. However, in any case where the defendant
22 was on probation, community control, or parole for a
23 controlled substance violation, or for an offense involving
24 the possession or use of a firearm, and at the time the search
25 was conducted the defendant was subject to random searches as
26 a condition of supervision, evidence may not be excluded or
27 suppressed from a hearing for a violation of supervision if
28 the sole basis for the exclusion or suppression of evidence is
29 that the search was conducted without sufficient suspicion or
30 reasonable grounds to believe that the defendant was in

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1 violation of the law or in violation of the terms of
2 supervision.

3 Section 6. For the purpose of incorporating the
4 amendment made by this act to section 948.06, Florida
5 Statutes, in references thereto, subsection (9), paragraph (b)
6 of subsection (11), and paragraph (b) of subsection (13) of
7 section 948.01, Florida Statutes, are reenacted to read:

8 948.01 When court may place defendant on probation or
9 into community control.--

10 (9) Procedures governing violations of community
11 control shall be the same as those described in s. 948.06 with
12 respect to probation.

13 (11) The court may also impose a split sentence
14 whereby the defendant is sentenced to a term of probation
15 which may be followed by a period of incarceration or, with
16 respect to a felony, into community control, as follows:

17 (b) If the offender does not meet the terms and
18 conditions of probation or community control, the court may
19 revoke, modify, or continue the probation or community control
20 as provided in s. 948.06. If the probation or community
21 control is revoked, the court may impose any sentence that it
22 could have imposed at the time the offender was placed on
23 probation or community control. The court may not provide
24 credit for time served for any portion of a probation or
25 community control term toward a subsequent term of probation
26 or community control. However, the court may not impose a
27 subsequent term of probation or community control which, when
28 combined with any amount of time served on preceding terms of
29 probation or community control for offenses pending before the
30 court for sentencing, would exceed the maximum penalty
31 allowable as provided in s. 775.082. Such term of

1 incarceration shall be served under applicable law or county
2 ordinance governing service of sentences in state or county
3 jurisdiction. This paragraph does not prohibit any other
4 sanction provided by law.

5 (13) If it appears to the court upon a hearing that
6 the defendant is a chronic substance abuser whose criminal
7 conduct is a violation of chapter 893, the court may either
8 adjudge the defendant guilty or stay and withhold the
9 adjudication of guilt; and, in either case, it may stay and
10 withhold the imposition of sentence and place the defendant on
11 drug offender probation.

12 (b) Offenders placed on drug offender probation are
13 subject to revocation of probation as provided in s. 948.06.

14 Section 7. For the purpose of incorporating the
15 amendment made by this act to section 948.06, Florida
16 Statutes, in a reference thereto, section 958.14, Florida
17 Statutes, is reenacted to read:

18 958.14 Violation of probation or community control
19 program.--A violation or alleged violation of probation or the
20 terms of a community control program shall subject the
21 youthful offender to the provisions of s. 948.06(1). However,
22 no youthful offender shall be committed to the custody of the
23 department for a substantive violation for a period longer
24 than the maximum sentence for the offense for which he or she
25 was found guilty, with credit for time served while
26 incarcerated, or for a technical or nonsubstantive violation
27 for a period longer than 6 years or for a period longer than
28 the maximum sentence for the offense for which he or she was
29 found guilty, whichever is less, with credit for time served
30 while incarcerated.

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1 Section 8. This act shall take effect July 1 of the
2 year in which enacted.

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5 LEGISLATIVE SUMMARY

6 Requires probationers and community controllees on
7 supervision for controlled substance violations or
8 certain offenses involving firearms to submit to random
9 searches without a warrant. Prohibits contact by an
10 offender with the victim, unless authorized by the court,
11 as a standard condition of probation or community
12 control. Authorizes certain searches of the person,
13 residence, or property of a probationer or community
14 controllee. Prohibits the exclusion or suppression of
15 evidence from trials for subsequent offenses by offenders
16 on probation, community control, or parole, or from
17 hearings for violations of probation, community control,
18 or parole, under certain circumstances when there was
19 reasonable suspicion to believe that the offender
20 violated the law or the terms of probation, community
21 control, or parole. Provides an exception with respect to
22 offenders under supervision for controlled substance
23 violations or certain firearms offenses. Prohibits
24 suppression of evidence in hearings for a violation of
25 supervision by such offenders when the suppression is
26 based solely on insufficient suspicion or reason to
27 believe a violation of law or the terms of supervision
28 occurred, under certain circumstances.
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