

By Representatives Byrd, Merchant and Stabins

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,

15

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

17

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 to section 948.03, Florida Statutes, in references  
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1 thereto, the following sections or subdivisions of Florida  
2 Statutes are 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.

11 948.001 Definitions.--As used in this chapter, the  
12 term:

13 (5) "Probation" means a form of community supervision  
14 requiring specified contacts with parole and probation  
15 officers and other terms and conditions as provided in s.  
16 948.03.

17 958.03 Definitions.--As used in this act:

18 (4) "Probation" means a form of community supervision  
19 requiring specified contacts with parole and probation  
20 officers and other terms and conditions as provided in s.  
21 948.03.

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

25 948.06 Violation of probation or community control;  
26 revocation; modification; continuance; failure to pay  
27 restitution or cost of supervision.--

28 (1) Whenever within the period of probation or  
29 community control there are reasonable grounds to believe that  
30 a probationer or offender in community control has violated  
31 his or her probation or community control, any law enforcement



1 officer who is aware of the probationary or community control  
2 status of the probationer or offender in community control or  
3 any parole or probation supervisor may search without a  
4 warrant, or request any county or municipal law enforcement  
5 officer to search without a warrant, such probationer or  
6 offender or such probationer's or offender's residence or  
7 property.Whenever within the period of probation or community  
8 control there are reasonable grounds to believe that a  
9 probationer or offender in community control has violated his  
10 or her probation or community control in a material respect,  
11 any law enforcement officer who is aware of the probationary  
12 or community control status of the probationer or offender in  
13 community control or any parole or probation supervisor may  
14 arrest or request any county or municipal law enforcement  
15 officer to arrest such probationer or offender without warrant  
16 wherever found and forthwith return him or her to the court  
17 granting such probation or community control. Any committing  
18 magistrate may issue a warrant, upon the facts being made  
19 known to him or her by affidavit of one having knowledge of  
20 such facts, for the arrest of the probationer or offender,  
21 returnable forthwith before the court granting such probation  
22 or community control. Any parole or probation supervisor, any  
23 officer authorized to serve criminal process, or any peace  
24 officer of this state is authorized to serve and execute such  
25 warrant. The court, upon the probationer or offender being  
26 brought before it, shall advise him or her of such charge of  
27 violation and, if such charge is admitted to be true, may  
28 forthwith revoke, modify, or continue the probation or  
29 community control or place the probationer into a community  
30 control program. If probation or community control is revoked,  
31 the court shall adjudge the probationer or offender guilty of

1 the offense charged and proven or admitted, unless he or she  
2 has previously been adjudged guilty, and impose any sentence  
3 which it might have originally imposed before placing the  
4 probationer on probation or the offender into community  
5 control. If such violation of probation or community control  
6 is not admitted by the probationer or offender, the court may  
7 commit him or her or release him or her with or without bail  
8 to await further hearing, or it may dismiss the charge of  
9 probation or community control violation. If such charge is  
10 not at that time admitted by the probationer or offender and  
11 if it is not dismissed, the court, as soon as may be  
12 practicable, shall give the probationer or offender an  
13 opportunity to be fully heard on his or her behalf in person  
14 or by counsel. After such hearing, the court may revoke,  
15 modify, or continue the probation or community control or  
16 place the probationer into community control. If such  
17 probation or community control is revoked, the court shall  
18 adjudge the probationer or offender guilty of the offense  
19 charged and proven or admitted, unless he or she has  
20 previously been adjudged guilty, and impose any sentence which  
21 it might have originally imposed before placing the  
22 probationer or offender on probation or into community  
23 control.

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

26 (a) The defendant has previously been convicted of a  
27 felony;

28 (b) The defendant was on probation or community  
29 control at the time of the offense;  
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1       (c) The defendant was subject to random searches, as a  
2 condition of supervision, at the time the search was  
3 conducted; and

4       (d) The search was conducted when there was reasonable  
5 suspicion to believe that the defendant was in violation of  
6 the law or in violation of the terms of probation, community  
7 control, or parole.

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

25       Section 4. For the purpose of incorporating the  
26 amendments to section 948.06, Florida Statutes, in references  
27 thereto, the following sections or subdivisions of Florida  
28 Statutes are reenacted to read:

29       948.01 When court may place defendant on probation or  
30 into community control.--

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

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

8           (b) If the offender does not meet the terms and  
9 conditions of probation or community control, the court may  
10 revoke, modify, or continue the probation or community control  
11 as provided in s. 948.06. If the probation or community  
12 control is revoked, the court may impose any sentence that it  
13 could have imposed at the time the offender was placed on  
14 probation or community control. The court may not provide  
15 credit for time served for any portion of a probation or  
16 community control term toward a subsequent term of probation  
17 or community control. However, the court may not impose a  
18 subsequent term of probation or community control which, when  
19 combined with any amount of time served on preceding terms of  
20 probation or community control for offenses pending before the  
21 court for sentencing, would exceed the maximum penalty  
22 allowable as provided in s. 775.082. Such term of  
23 incarceration shall be served under applicable law or county  
24 ordinance governing service of sentences in state or county  
25 jurisdiction. This paragraph does not prohibit any other  
26 sanction provided by law.

27           (13) If it appears to the court upon a hearing that  
28 the defendant is a chronic substance abuser whose criminal  
29 conduct is a violation of chapter 893, the court may either  
30 adjudge the defendant guilty or stay and withhold the  
31 adjudication of guilt; and, in either case, it may stay and

1 withhold the imposition of sentence and place the defendant on  
2 drug offender probation.

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

5 958.14 Violation of probation or community control  
6 program.--A violation or alleged violation of probation or the  
7 terms of a community control program shall subject the  
8 youthful offender to the provisions of s. 948.06(1). However,  
9 no youthful offender shall be committed to the custody of the  
10 department for a substantive violation for a period longer  
11 than the maximum sentence for the offense for which he or she  
12 was found guilty, with credit for time served while  
13 incarcerated, or for a technical or nonsubstantive violation  
14 for a period longer than 6 years or for a period longer than  
15 the maximum sentence for the offense for which he or she was  
16 found guilty, whichever is less, with credit for time served  
17 while incarcerated.

18 Section 5. This act shall take effect July 1 of the  
19 year in which enacted.

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HOUSE SUMMARY

Requires probationers and community controllees on supervision for controlled substance violations or certain offenses involving firearms to submit to random searches without a warrant. Prohibits contact by an offender with the victim, unless authorized by the court, as a standard condition of probation or community control. Authorizes certain searches of the person, residence, or property of a probationer or community controllee. Prohibits the exclusion or suppression of evidence from trials for subsequent offenses by offenders on probation, community control, or parole, or from hearings for violations of probation, community control, or parole, under certain circumstances when there was reasonable suspicion to believe that the offender violated the law or the terms of probation, community control, or parole. Provides an exception with respect to offenders under supervision for controlled substance violations or certain firearms offenses. Prohibits suppression of evidence in hearings for a violation of supervision by such offenders when the suppression is based solely on insufficient suspicion or reason to believe a violation of law or the terms of supervision occurred, under certain circumstances.