

**STORAGE NAME:** h2193.cor

**DATE:** April 6, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
CORRECTIONS  
ANALYSIS**

**BILL #:** HB 2193 (PCB COR 00-09A)

**RELATING TO:** Department of Corrections

**SPONSOR(S):** Committee on Corrections and Representative Trovillion

**TIED BILL(S):** SB 2212

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CORRECTIONS YEAS 7 NAYS 1
  - (2) CRIMINAL JUSTICE APPROPRIATIONS
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

The bill requires the department to compile and make available to the public information concerning individuals under community supervision by the Department. It requires the department to furnish radios and cell phones to correctional probation officers as the funds of the department permit. The bill also requires all probation officers who carry firearms to meet certain requirements no later than July 1, 2002.

The bill requires the department to submit a technology plan to the Legislature no later than March 1, 2001, which identifies the computer needs of probation officers.

The bill clarifies that when the department collects payments from inmates, the funds must first be applied toward satisfying victim restitution.

The bill precludes certain offenders from being eligible for probation or community control as a result of the nature of their offense. It also generally requires imposition of an incarceration sentence for offenders on community control if the offender is found to have committed a substantially similar subsequent offense.

The bill imposes additional conditions of probation or community control, and provides for electronic monitoring at the discretion of the court.

It requires violators of supervision who commit a substantially similar offense to serve an incarceration sentence.

The bill requires the department to electronic monitoring of offenders through both global-positioning-system devises and radio-frequency monitoring.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

**Less Government:** The bill does not support the principle of less government because sections 1, 4, 6, 7, 8, 9 and 11 increase the duties of the Department of Corrections. Sections 3 and 4 require additional training of existing personnel and require the filing of a report not currently required.

**Individual Freedom:** Individuals on probation and community control will be subject to additional conditions of probation or community control.

B. PRESENT SITUATION:

Section 1. Florida's Community Control Program was created in 1983 and it constitutes the state's most intensive supervision program for felons with over 100,000 cases on active supervision by the department. The media has on several occasions been critical about the lack of public information regarding persons who are serving sentences in the community on community control. While most of the information concerning these individuals is a public record, this information is not always easily accessible to the community in which these individuals are located. Information available to the community should include a photo of the individual. While the department currently has the authority to take a photograph of an offender, s. 944.09, F.S., the offender generally has the right to refuse unless the order of supervision affirmatively requires submission to the photograph.

Section 2. Currently, the department provides safety equipment to probation officers within existing resources. Cellular telephones and police radios are made accessible to staff based on need and availability. At times, needed resources may not be available.

Section 3. Currently, the department permits correctional probation officers to carry firearms in accordance with s. 33-302.104, Florida Administrative Code. The officers must furnish their own firearms and pay for the appropriate training.

Section 4. The information technology plan of the department does not always assure consistency and uniformity of equipment in addressing the needs of the department and making future plans for technology improvements.

Section 5. At the current time the department does not prioritize collection of restitution over other court ordered obligations. Instead, funds available are pro-rated among the

existing obligations. There is some sentiment that the payment of restitution be given first priority

Section 6. An offender is currently prohibited from being placed on community control when they have been found guilty (or had adjudication withheld) for a forcible felony and have a prior conviction of a forcible felony. No such restriction exists for placement on probation. Under current law, offenders with a criminal punishment score of 44 or fewer points (and have no mandatory minimum sentence) are eligible for placement on probation.

Section 7. Presently terms and conditions of community control require the individual participating in probation or community control not to associate with those engaged in criminal behavior, but the conditions are not specific that the individual may not violate any law. The current statute does not require the offender to pay the costs of drug testing or submit to the taking of a digitized photograph at the request of a probation officer. Under s. 948.03 (3)(a)(1), F.S., the department may order electronic monitoring of offenders on community control at its discretion. Curfews presently exist of 8 hour periods for offenders; but occasionally this may not be sufficient to protect a potential victim. Sex offenders placed on probation are required to submit to polygraph tests, but no such requirement exists for sex offenders placed on community control.

Sections 8 and 9. Section 948.032, F.S., imposes numerous conditions for those on probation, but these conditions are not statutorily required of those placed upon community control.

Section 10. When violations of community control occur, and the violation is found by a court to be for a substantially similar to the offense for which community control was imposed, the courts may now impose a new sentence of probation or community control without the violator having to serve an incarceration sentence.

Section 11. In 1997, the Legislature funded the department with \$100,000 for a small pilot project on new electronic monitoring technologies. The department exceeded its authority when it subsequently executed a 5 year contract with Pro-Tech for global positioning monitoring.

#### C. EFFECT OF PROPOSED CHANGES:

**Section 1.** This section provides legislative intent to make information regarding offenders on community control accessible to the public. Information is required to include: name, address, and offense. In all cases where possible, the bill requests that a photograph be accessible. The provision of this information is to be accomplished within existing department resources. The department would be required to timely update the information and to timely remove it upon the individual's discharge from supervision. Individuals participating in pre-trial intervention programs would be excluded from the requirements of this section.

**Section 2.** This section also requires the department to accomplish its goals within existing resources, and the bill would presumably set some kind of departmental priority to furnish probation officers with cellular telephones and police radios so that they can perform their jobs without undue risk.

**Section 3.** This section will require probation officers who wish to carry a firearm to be qualified under the Criminal Justice Standards and Training Commission requirements and to use a firearm issued by the Department of Corrections. This section is scheduled to be fully implemented by July 1, 2002.

**Section 4.** The department is required to identify its needs for computer and other equipment, and file a report with the legislature no later than March 1, 2001.

**Section 5.** This section would amend s. 775.089, F.S., concerning victim restitution. The change would clarify that when the department collects various court-ordered or statutorily mandated payments from an offender, the offender's funds must first be used to pay restitution before it can be used to satisfy other obligations.

**Section 6.** This section would clarify s. 948.01 (10), F.S., and correct an anomaly in the law. Courts would be prohibited from placing an offender on regular probation if they are statutorily prohibited from being placed on community control.

Individuals currently not eligible for community control are those who have committed "forcible felonies." The cross references currently existing would be replaced by a definitive listing of the ineligible crimes.

The authority of a sentencing court to sentence an offender on community control to additional community control or probation for a substantially similar offense would be curtailed by subsection 948.01 (11), F.S. The provision would prohibit these individuals from being continued on community control, given a new sentence of community control if the court revokes the original sentence of community control, being placed on any form of probation, or being released from supervision, without imposition of an incarceration sentence. Judges would be unable to modify or run a new community supervision sentence either consecutively or concurrently with the original community control sentence. Courts would lose the ability to lessen the severity of the supervision by modifying or revoking the original sentence of community control to some form of probation. Courts could no longer release or terminate an offender from supervision without the imposition of an incarceration sentence.

**Section 7.** This section makes technical, conforming changes to the statute on terms and conditions of probation or community control. Presently, individuals subject to standard conditions must not associate with persons engaged in criminal activity; one change would add violation of any law as an additional requirement. In most instances, offenders will now also be required to pay the costs of random drug testing. Electronic monitoring will now be at the direction of the sentencing court, rather than at the discretion of the department.

Also clarified are provisions relating to sex offenders on probation or community control. Polygraph examinations of sex offenders would be required to be performed by individuals specifically trained to interpret polygraph results of sex offenders. Electronic monitoring of these offenders would be determined by the courts, not the department.

**Section 8.** Changes are made to s. 948.032, F.S., to clarify that these provisions apply to individuals on community control as well as those on probation. Currently if a judge sentences an individual to probation and orders restitution, that restitution becomes a condition of the probation, and a judge may revoke that probation for failure to pay the restitution. Individuals sentenced to community control and ordered to pay restitution will also now have that restitution as a condition of the community control. The criteria for determining who has the ability when considering revocation remains unchanged.

**Section 9.** Section 948.04, F.S., is also amended to expressly include community control.

**Section 10.** Amends s. 948.06 (1), F.S., to repeat the limitation on judicial authority imposed in section 6 of this bill when an individual violates supervision by committing the same or a substantially similar offense for which the offender was originally sentenced to community control. In addition to the limitations imposed in section 6, limitations would also be placed on judicial discretion in cases where an offender on community control is found to have violated supervision in any material respect. A judge could no longer place an offender on a lesser form of supervision through modification or imposition of a new sentence after a revocation if it finds an offender has violated community supervision in any material respect. Also prohibited would be termination of community supervision as a result on a violation without further penalty.

**Section 11.** Creates s. 948.11(2), F.S. This would require the department to maintain the use of both radio-frequency monitoring and global position system monitoring as funded by the Legislature. This subsection expresses the Legislature's intent that sentencing courts have options which both maximize public safety and monitor in a cost-efficient manner.

D. SECTION-BY-SECTION ANALYSIS:

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Judicial System may experience an economic impact. For judges, violation hearings may increase if offenders are not allowed to be terminated from supervision or placed on a lesser form of probation. (Increased levels of supervision in community control result in a higher technical violation rate.) But total hearings may decrease as a result of the requirement that "substantially similar" crimes result in incarceration; there may be fewer violations hearings.

Prosecutors and public defenders may be impacted as well. Restrictions in plea bargaining options may result in more trials.

The department will experience some costs in taking offender pictures and compiling a data base, although the statute directs this to be accomplished.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

No local government revenues will be generated because of the passage of this legislation.

2. Expenditures:

No expenditures will be required on behalf of local governments because of the passage of this legislation.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

**A. APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the revenue raising authority of counties or municipalities.

**C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

**V. COMMENTS:**

**A. CONSTITUTIONAL ISSUES:**

None.

**B. RULE-MAKING AUTHORITY:**

It is not anticipated that the Department of Corrections will need additional rulemaking authority to implement this legislation.

**STORAGE NAME:** h2193.cor

**DATE:** April 6, 2000

**PAGE 7**

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

No changes were made in the Committee on Corrections.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

Staff Director:

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Jo Ann Levin

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