

STORAGE NAME: h0229s2.cor

DATE: March 20, 2000

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

BILL #: CS/CS/HB 229

RELATING TO: Department of Corrections

SPONSOR(S): Committee on Corrections and Committee on Governmental Operations and Representatives Crady, Fasano, Kilmer and Others

TIED BILL(S): SB 2212

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

- (1) GOVERNMENTAL OPERATIONS YEAS 7 NAYS 0
 - (2) CORRECTIONS YEAS 8 NAYS 0
 - (3) GENERAL APPROPRIATIONS
 - (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.

This bill creates the "Keith Ward Act" and adds correctional probation officers, the supervisors of such officers, and probation and parole circuit and deputy circuit administrators to the Special Risk Class of the Florida Retirement System (FRS), effective January 1, 2001.

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 devices 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 type="checkbox"/> | No <input checked="" 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, 9, 10, 11, 12 and 14 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.

Personal Responsibility: Correctional Probation Officers will not bear the increased costs which will be incurred as a result of this special risk classification. The system will be supported by funds appropriated by the Legislature to the Department of Corrections.

The bill will allow correctional probation officers and their supervisors to retire early without economic penalty.

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 Section 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.

Sections 5, 6 and 7. The Florida Retirement System (FRS) is a statewide, defined benefit pension plan covering the employees of state, county, municipal and special district units of government. The FRS has five classes of membership: Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected State and County Officer's Class, and Senior Management Service Class.

The Special Risk Class criteria currently addresses only the need of a group of employees to retire earlier than other employees due to the adverse effects of aging upon their ability to perform their job duties. The criteria do not address a desire to reward employees with hazardous jobs. The Legislature created the Special Risk Class to prevent declining performance, not to compensate those who perform hazardous duties. It should be noted that all FRS members, whether Special Risk Class or Regular Class, are entitled to the same in-line-of-duty disability and death benefits.

According to the department, there are currently 3,638 correctional probation officers. These staff currently belong to the Regular Class. Members of the Regular Class are subject to a normal retirement age of 62 or upon completion of 30 years of service. Regular Class members accrue retirement credit at a rate of 1.6 to 1.68 percent of the average final compensation for each year of service. To fund these benefits, employers must contribute an amount equal to 9.21 percent of each employee's pay (effective July 1, 1999).

Section 121.0515, F.S., specifies the eligibility requirements for membership in the Special Risk Class. Membership is restricted by statute and is currently composed of law enforcement personnel, firefighters and correctional officer personnel that have sworn responsibilities in the apprehension, detention, detection and surveillance of criminal law violators. The class also includes supervisors of such employees.

Members of the Special Risk Class achieve normal retirement at the age of 55 or after 25 years of service. Special Risk Class members also accrue retirement credits at the higher rate of 3 percent of average final compensation for each year of service. These advantages are intended to help offset the shorter careers served by special risk employees. To fund Special Risk Class retirement benefits, employers must contribute 20.22 percent of each employee's pay.

In establishing the Special Risk Class, the Legislature recognized that an essential function of some positions is the performance of physically demanding work, or work that requires extraordinary agility and mental acuity. In these positions, the normal aging process may leave employees unable to continue their duties without risking the health and safety of the public, their coworkers, or themselves. Section 121.0515(1), F.S., provides the Legislature's intent that the Special Risk Class be a mechanism which would allow employees at such a "special risk" to retire early without financial penalties.

Prior to October 1, 1978, correctional probation officers were included in the Special Risk Class. This group of employees was removed, effective October 1, 1978, because they failed to meet the revised certification requirements in s. 943.1395, F.S., and their primary duties did not constitute custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported.

Section 8. 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 9. 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 10. 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 section 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 11 and 12. 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 13. 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 14. 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 bill adds correctional probation officers, the supervisors of such officers, and probation and parole circuit and deputy circuit administrators to the Special Risk Class of the Florida Retirement System (FRS), effective January 1, 2001. The correctional probation officers must meet certification criteria currently required under s. 943.1395, F.S.

As mentioned by the Committee on Governmental Operations, correctional probation officers, the supervisors of such officers, and probation and parole circuit and deputy circuit administrators will receive an 87.5 percent improvement in their accrual value for service after January 1, 2001; the difference in the accrual value of the Special Risk Class benefit over the Regular Class benefit. The supervisory positions included in this bill are part of the chain of command of this group of probation officers which is consistent with the chain of command currently recognized in the Special Risk Class for law enforcement officers, firefighters, and correctional officers and their supervisors.

Expanding the Special Risk Class to include correctional probation officers and certain of their supervisors and administrators will increase Special Risk Class coverage requests from other groups who consider their positions dangerous, but whose positions also do not comply with the current Special Risk Class legislative intent and membership criteria.

The primary job duties and responsibilities of a correctional probation officer as stated in this bill must be "supervised custody, surveillance, control, investigation, and counseling of assigned inmates, probationers, parolees, or community controllees within institutions of the community; or the member must be the supervisor of a member or members who have such responsibilities." Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included; however, probation and parole circuit and deputy circuit administrators will participate in the Special Risk Class. If correctional probation officers are granted Special Risk Class membership, expectations of such membership for other professionals working within institutions who provide inmate supervision and counseling (classroom instructors, psychiatrists, psychologists, etc.) but who are not currently eligible for Special Risk Class membership will be created.

Correctional probation officers are required to interact with probationers, parolees, or community controllees outside of a controlled institutional setting. Presumably, the inherent dangers in this aspect of their job duties is one of the primary motivations for this proposed legislation. The curricula and the total hour requirements for certification of correctional probation officers is less stringent than that of a law enforcement officer. Currently law

enforcement officers and correction officers must successfully complete a more stringent education certification requirement.

This bill provides only prospective Special Risk Class coverage, effective January 1, 2001. Service between October 1, 1978, and December 31, 2000, will not count towards a special risk normal retirement date.

Section 8. 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 9. 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 10. 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 11. 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 12. Section 948.04, F.S., is also amended to expressly include community control.

Section 13. Amends s. 948.06 (1), F.S., to repeat the limitation on judicial authority imposed in section 9 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 9, 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 14. 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:

None.

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 with existing resources.

The cost to the department as a result of this bill's inclusion of correctional probation officers will be 11.01 percent of the salaries of the affected employees.¹ This is the difference between the current Regular Class contribution rate of 9.21 percent and the Special Risk Class rate of 20.22 percent.

Recurring Effects: FY 00-01(6mo.) \$ 6,888,138
FY 01-02(12mo.) \$14,189,563
FY 02-03(12mo.) \$14,615,250

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:

If the demographics of the group of affected members differ significantly from those of the current class members, this bill could have a fiscal impact on the FRS Trust Fund, and could possibly increase or decrease the contribution rates of the Regular Class and the Special Risk Class of membership. a census of the group after the positions are specified, and possibly a special study, would be required to determine the impact of the bill.

There are no local government positions that qualify for the Special Risk Class under this bill. Therefore, it appears the department is the only employer with affected positions. The Department of Corrections will pay an additional 11.01 percent (based upon current contribution rates) of the salaries of its 3,638 affected employees. This is the difference between the retirement contribution rate for Regular Class members of 9.21 percent and the recommended rate of 20.22 percent for Special Risk Class members.

¹The Department of Corrections reports that currently there are 3,638 employees that would be affected. In its reorganization, the Department of Corrections has revised its classification system. The department plans to transfer 110 positions to community corrections to assist in reducing supervision caseloads. The department has also discontinued the certification requirement for classification officers in the prison. (*Office of Program Policy Analysis and Government Accountability, Interim Status Report: Department of Corrections Reorganization, Report No. 99-17, December 1999.*) The effects can be expected to fluctuate as the number of specified employees in the department changes.

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 Division of Retirement of the Department of Management Services or the Department of Corrections will need additional rulemaking authority to implement this legislation.

C. OTHER COMMENTS:

In its 1998 Annual Report, the Florida Corrections Commission discusses this issue in detail. The commission recommends that correctional probation officers assigned to major institutions be reclassified as "correctional classification officers" and that only these staff become eligible for Special Risk Class status, not all correctional probation officers. The commission based its recommendation on the rationale that granting all correctional probation officers Special Risk Class status may create an expectation that other professional staff working in institutions who provide inmate supervision and counseling, such as medical staff, psychologist, and teachers, who currently are not, but should be under the Special Risk Class status.

Other groups that have sought Special Risk Class Coverage in the past include paramedics and emergency medical technicians, health care providers in the prison setting, assistant state attorneys, certain investigators who are not law enforcement officers and forensic unit workers. Special Risk coverage was recently extended to paramedics and emergency medical technicians. (*See s. 23 of Chapter 99-392, LOF*).

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Governmental Operations, at its February 8, 2000, committee meeting, adopted a technical amendment to correct a drafting error by reinserting one word that was inadvertently deleted from current statutory language when the bill was drafted. A technical amendment should be offered to correct a cross-reference error to s. 121.0515, F.S.

In the Committee on Corrections, a strike all amendment was adopted which added substantial material to the bill concerning the Department of Corrections, probation and community control. This was done to place the bill in conformance with SB 2212. Subsequent to the changes being made, bill drafting indicated that CS/CS/HB 229 may raise single subject concerns. While this bill analysis has been changed to reflect the content of CS/CS/HB 229, another amendment has been prepared for the sponsor which would return the bill to a form which would only include the Keith Ward Act.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Jimmy O. Helms

Jimmy O. Helms

AS REVISED BY THE COMMITTEE ON CORRECTIONS:

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