

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 428

SPONSOR: Judiciary Committee, Criminal Justice Committee and Senators Smith, Crist, Villalobos and others

SUBJECT: Community Control

DATE: March 19, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable/CS/CS</u>
3.	_____	_____	<u>APJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill creates the "Howard E. Futch Community Safety Act" which requires the Department of Corrections to:

- Verify that an offender sentenced to community control is statutorily ineligible for such sentence, and notify the judge, the state attorney, and the Attorney General of the offender's ineligibility within 30 days after the sentencing order was issued;
- Report quarterly to each circuit's chief judge and state attorney on the number of offenders placed on community control who are statutorily ineligible for community control, and report such information annually to the Governor, the Legislature, and the Florida Supreme Court;
- Develop and maintain a caseload equalization strategy for the identification of high-risk offenders needing the highest level of supervision, develop and implement a risk assessment classification system for community control offenders, and include in its annual department report to the Governor and the Legislature, a report on the department's community control program efforts; and
- Study the use of electronic monitoring and its effectiveness for community control, and to report the findings to the Governor and the Legislature by February 1, 2004.

The bill also allows the department to suspend the statutory caseload ratio requirement for supervision of offenders on electronic monitoring from July 1, 2003, until February 1, 2004, for the purposes of the study on electronic monitoring. The bill also replicates in chapter 921, F.S., relating to sentencing, an existing statutory provision found in chapter 948, F.S., relating to probation and community control, that restricts the placement of specific types of offenders from placement on community control.

This bill amends the following sections of the Florida Statutes: 921.187 and 948.10.

## II. Present Situation:

### **Brief Outline of Community Control Supervision Program**

Community control is a community-based punishment alternative to incarceration or regular probation. Section 948.001, F.S., defines it as “a form of intensive supervised house arrest in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.” Community control is intended for felons who are unsuitable for regular probation because of their criminal background or the seriousness of their crime, but for whom the court deems imprisonment to be unnecessary. Community control may also be appropriate for some felony probation or parole violators who commit technical or misdemeanor violations.

Because community control requires a higher level of supervision, s. 948.10(2), F.S., restricts a correctional probation officer from having more than 25 community controllees on his or her caseload. Violation of any community control condition may result in revocation by the court and imposition of any sentence which might have been imposed originally. Data provided by the Florida Corrections Commission indicates that there were 10,131 offenders on community control as of November 30, 2002.

### **Electronic Monitoring**

The department uses radio frequency (RF) electronic monitoring and Global Positioning Satellite (GPS) system electronic monitoring as an enhancement to community control supervision. RF monitors provide a means to determine if an offender leaves his or her residence without authorization, but cannot report the offender’s location outside of the residence. GPS monitors continuously track an offender’s movements and report if an offender leaves an “inclusion zone” or enters an “exclusion zone.” These zones are established according to the circumstances of the individual case. With active GPS systems, violations are immediately reported to an on-call officer for investigation and resolution. Passive GPS systems record the same information, but report only once a day instead of continuously. As of June 30, 2002, 228 community controllees were on RF monitors and 380 were monitored by GPS systems. In total, this is approximately 5 percent of the community control population.

The department currently does not exercise its statutorily authorized discretion to require electronic monitoring under s. 948.03(3)(a)1, F.S., in cases where it is not a specific condition of the sentencing order for probation or community control, based on a 1988 court case and other decisions that prohibit the revocation of probation or community control for violation of conditions that were not imposed specifically by the sentencing court.<sup>1</sup>

### **Statutory Ineligibility for Placement on Community Control**

An offender is statutorily ineligible for placement on community control if he or she has currently and previously been convicted or had adjudication withheld for a forcible felony, except for manslaughter or burglary. Included offenses are treason; murder; sexual battery; carjacking; home-invasion robbery; robbery; arson; kidnapping; aggravated assault; aggravated

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<sup>1</sup> See *State v. Carson*, 531 So.2d 1069 (Fla. 4<sup>th</sup> Dist., 1988)(an offender’s failure to submit to electronic monitoring ordered by the department can not be a basis for revocation of community control.

battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. *See* ss 948.01(10) and 776.08, F.S.

Despite the statutory prohibition against placing forcible felons on community control, the Department of Corrections reports that it is supervising 287 offenders who are statutorily ineligible for community control supervision. In all cases, these offenders were placed on community control by order of the sentencing court. Anecdotal information indicates that the majority of these placements were in accordance with a plea agreement entered into by the prosecution and the defense.

### **Senator Futch's Interest and Filing of SB 428, and Request for Report from Florida Corrections Commission**

The late Senator Howard E. Futch, then Chairman of the Senate's Committee on Criminal Justice for the 2002-2003 Legislative Session, expressed concerns about news reports on crimes committed by offenders on community control, particularly those who were statutorily ineligible for placement on community control. A preliminary review indicated that some offenders were being sentenced to community control for which they were statutorily ineligible. In order to assist the Legislature in developing appropriate proposals, Senator Futch asked the Florida Corrections Commission to review the Department of Corrections community control program<sup>2</sup> and report on:

- The number of statutorily ineligible persons on community control (current and past);
- The practice of placing ineligible offenders on community control by surveying prosecutors, judges and probation officers and;
- The number of offenders who are statutorily ineligible for community control are monitored electronically (current and past);
- The number of offenders who statutorily ineligible for community control have violated the conditions of community control (current and past);
- The status of the Department of Corrections compliance with the statutorily required caseload ratio of 25:1 supervisee/officer statewide, including which localities are not in compliance and whether compliance can be done without additional appropriations;
- The quality assurance methods the department uses to ensure compliance with the 25:1 ratio;
- The rate of offenses committed by community controllees compares with the offense rate of regular probationers and of the general public;
- The efforts of the department to improve public safety when it communicates with the court and monitors offenders;
- The identification of any efficiencies to make monitoring offenders more cost-effective;
- The impact of the phase-down of the radio-frequency monitoring units, whether the current ratio of GPS units to radio frequency units is optimal, and suggested recommendations for technology investments within available funding limits.

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<sup>2</sup> See Letter from Senator Futch to William Evers, Chairman of the Florida Corrections Commission., Jan. 7, 2003.

On March 17, 2003, the Florida Corrections Commission released its report entitled "A Review of the Community Control Program & Electronic Monitoring Within the Florida Department of Corrections." The report included two substantive recommendations for legislative proposals.

### **III. Effect of Proposed Changes:**

This bill creates the "Howard E. Futch Community Safety Act" in recognition of the late Senator Futch who had initiated efforts to study the issue of statutorily ineligible offenders placed on community control and to file legislation to protect the public against offenders on community control.

This bill does not change existing law that prohibits the placement of forcible felony offenders from being placed on community control. It does, however, require the Department of Corrections to take certain actions and submit reports intended to increase judicial and prosecutorial awareness regarding the unintended placement of certain offenders under community control supervision, and to increase the protection of the public against offenders on community control. Specifically, section 2 amends s. 948.10, F.S., to require the department to:

- Review community control placements and verify whether an ineligible offender was placed on community control.
- Notify the sentencing judge, the state attorney and the Attorney General that the offender was ineligible for placement on community control within 30 days after entry of the sentencing order.
- Provide a quarterly report of the number of ineligible offenders placed on community control within each circuit to the chief judge and state attorney of that circuit.
- Provide an annual report to the Governor, the President of the Senate, the Speaker of the House, and the Chief Justice of the Florida Supreme Court about the placement of ineligible offenders on community control. This report is intended for use in preparing judicial education programs or for any other purpose.
- Develop and maintain a weighted caseload equalization strategy. This strategy is to be designed to ensure that high-risk offenders receive the highest level of supervision by recognizing that certain types of cases require more intensive supervision than other cases.
- Develop and implement a supervision risk control instrument for offenders on community control in order to identify the class of community controllees who require the most intensive supervision and to allocate resources accordingly.
- Include certain information in its annual department report a detailed analysis of the community control program and of efforts to protect the public from community controllees. Other required information includes specific information on the department's ability to meet minimum contact standards, the number of crimes committed by community controllees and the level of supervision that is provided.

Section 3 requires the Department of Corrections to study the effectiveness of using electronic monitoring in the community control program. In order to conduct the study, the department is authorized to deviate from the statutory maximum 25:1 officer to offender caseload during the period from June 1, 2003, to February 1, 2004 when electronic monitoring is used.

Section 4 enacts a recommendation from the Florida Corrections Commission, by replicating in s. 921.187, F.S., a provision found in s. 948.10(10), F.S., relating to probation and community control, that restricts certain offenders from being placed on community control and probation to facilitate judicial and prosecutorial awareness of this restriction.

Section 5 provides an effective date of July 1, 2003.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have the indirect benefit of protecting the public's safety by increasing judicial and prosecutorial awareness of the statutory restriction on placement of certain offenders on community control prior to plea-bargaining and sentencing, and reducing the number of statutorily ineligible offenders being placed on community control.

C. Government Sector Impact:

The duties of the Department of Corrections under the bill may affect the department's workload and may have a fiscal impact, although it is indeterminate at this time. It is reported, however, that the department's study of the use of electronic monitoring in the community and the reporting requirements should not have a significant fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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