

HB 1801

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A bill to be entitled

An act relating to violations of probation or community control; amending s. 948.06, F.S.; defining the term "forcible felony violator"; limiting the circumstances in which forcible felony violators are eligible for bail; providing for violation hearings; providing procedures for such hearings; requiring presentencing "danger to community hearings" in certain circumstances; providing procedures for such hearings; providing criminal penalties; specifying sentencing alternatives; requiring the imposition of a specified sentence in certain circumstances; providing an exception; requiring written findings in certain circumstances; defining the term "forcible felony violator"; limiting the circumstances in which forcible felony violators are eligible for bail; providing for violation hearings; providing procedures for such hearings; requiring presentencing danger to community hearings in certain circumstances; providing procedures for such hearings; providing criminal penalties; specifying sentencing alternatives; requiring the imposition of a specified sentence in certain circumstances; providing an exception; requiring written findings in certain circumstances; reenacting s. 948.01(9), F.S., relating to procedures governing violations of community control, for the purpose of incorporating the amendment to s. 988.06, F.S., in a reference thereto; providing an effective date.

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

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Section 1. Subsection (8) is added to section 948.06, Florida Statutes, to read:

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

(8) This subsection shall govern violations of probation or community control by forcible felony violators.

(a) As used in this subsection, the term "forcible felony violator" means a person who is on probation for, or was previously convicted of, a forcible felony as defined in s. 776.08 or who has committed a forcible felony as defined in s. 776.08 and is being prosecuted for the offense as a violation of a separate term of probation or community control.

(b) Notwithstanding any other provision of law, when a probationer or community controllee qualifies as a forcible felony violator as defined herein, upon his or her arrest, he or she is not eligible for release on bail or surety bond, unless the violation involved is based solely on the failure to pay costs, fines, or restitution payments ordered by the court. In the case of a violation arising from any other ground, a forcible felony violator must remain in custody pending the resolution of his or her probation or community control violation hearing. The court shall hold such violation hearing, unless the forcible felony violator admits to the violation, at which time both the forcible felony violator and the state attorney shall have the opportunity to be heard and to present evidence.

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58 (c) If the court determines that a forcible felony
59 violator has committed the nonmonetary violations alleged,
60 before sentence may lawfully be imposed, the court must hold a
61 "danger to the community hearing" to determine whether the
62 forcible felony violator's release, or release on probation,
63 poses a danger to the community. At such danger to the community
64 hearing, both the forcible felony violator and the state
65 attorney shall have the opportunity to be heard and present
66 evidence as to the forcible felony violator's danger to the
67 community.

68 (d) If, after the danger to the community hearing, the
69 court determines by a preponderance of evidence that a forcible
70 felony violator poses a danger to the community, the court shall
71 sentence him or her to the greater sanction of:

- 72 1. The sentence arrived at through the use of the
73 worksheet computations under the Criminal Punishment Code.
74 2. A prison term of no less than 5 years.

75
76 The court may only sentence the forcible felony violator to any
77 sentence other than is provided in this paragraph if the court
78 finds by a preponderance of the evidence that the forcible
79 felony violator poses no danger to the community. If the court
80 makes a finding of nondanger to the community, the finding must
81 be in writing and signed by the court before a sentence other
82 than is provided in this paragraph may lawfully be imposed.

83 Section 2. For the purpose of incorporating the amendment
84 to section 948.06, Florida Statutes, in a reference thereto,
85 subsection (9) of section 948.01, Florida Statutes, is reenacted
86 to read:

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87 948.01 When court may place defendant on probation or into
88 community control.--

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

92 Section 3. This act shall take effect upon becoming a law.