

Bill No. CS for SB 2284

Amendment No. \_\_\_\_ Barcode 334206

CHAMBER ACTION

Senate

House

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Senator Villalobos moved the following amendment:

**Senate Amendment**

On page 5, line 11, through page 19, line 20, delete those lines

and insert: orientation program referral to the nearest or most appropriate community substance abuse program.

~~(5)(4)~~ The department shall conduct a needs assessment of every inmate to determine which, if any, basic support services the inmate needs after release. Substance abuse treatment shall be deemed a basic support service for any inmate who has been identified as needing substance abuse treatment pursuant to s. 944.473 and who has not been provided an opportunity to receive such treatment while incarcerated.

~~(6)(5)~~ The department may contract with public or private entities, including faith-based service groups, for the provision of all or part of the services pursuant to this section.

~~(7)(6)(a)~~ The department shall notify every inmate, in no less than 18-point type in the inmate's release documents,

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1 that the inmate may be sentenced pursuant to s. 775.082(9) if  
2 the inmate commits any felony offense described in s.  
3 775.082(9) within 3 years after the inmate's release. This  
4 notice must be prefaced by the word "WARNING" in boldfaced  
5 type.

6 (b) Nothing in this section precludes the sentencing  
7 of a person pursuant to s. 775.082(9), nor shall evidence that  
8 the department failed to provide this notice prohibit a person  
9 from being sentenced pursuant to s. 775.082(9). The state  
10 shall not be required to demonstrate that a person received  
11 any notice from the department in order for the court to  
12 impose a sentence pursuant to s. 775.082(9).

13 Section 1. Subsection (2) of section 947.22, Florida  
14 Statutes, is amended to read:

15 947.22 Authority to arrest parole violators with or  
16 without warrant.--

17 (2) Any parole and probation officer, when she or he  
18 has reasonable ground to believe that a parolee, control  
19 releasee, or conditional releasee has violated the terms and  
20 conditions of her or his parole, control release, or  
21 conditional release in a material respect, has the right to  
22 arrest or request any law enforcement officer to arrest the  
23 releasee or parolee without warrant and bring her or him  
24 forthwith before one or more commissioners or a duly  
25 authorized representative of the Parole Commission or Control  
26 Release Authority; and proceedings shall thereupon be had as  
27 provided herein when a warrant has been issued by a member of  
28 the commission or authority or a duly authorized  
29 representative of the commission or authority. Local law  
30 enforcement officers shall assist the probation officer, upon  
31 request, in making warrantless arrests, taking the offender

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1 into custody and transporting the offender to the county jail.

2 Section 2. Subsections (1) and (3) of section 948.03,  
3 Florida Statutes, as amended by section 136 of chapter  
4 2003-402, Laws of Florida, are amended to read:

5 948.03 Terms and conditions of probation or community  
6 control.--

7 (1) The court shall determine the terms and conditions  
8 of probation or community control. Conditions specified in  
9 paragraphs ~~(a)-(n)(a)-(m)~~ do not require oral pronouncement  
10 at the time of sentencing and may be considered standard  
11 conditions of probation. Conditions specified in paragraphs  
12 ~~(a)-(n)(a)-(m)~~ and (2)(a) do not require oral pronouncement  
13 at sentencing and may be considered standard conditions of  
14 community control. These conditions may include among them  
15 the following, that the probationer or offender in community  
16 control shall:

17 (a) Report to the probation officers ~~and parole~~  
18 ~~supervisors~~ as directed. The offender shall provide to the  
19 probation officer a full, truthful, and complete written  
20 report each month. The report must include, but need not be  
21 limited to, the offender's employment status, monthly  
22 earnings, and financial ability. At the discretion of the  
23 department, the reporting requirement may include electronic  
24 monitoring.

25 (b) Permit such officers ~~supervisors~~ to visit him or  
26 her at his or her home or elsewhere.

27 (c) Work faithfully at suitable employment insofar as  
28 may be possible.

29 (d) Remain within a specified place.

30 (e) Make reparation or restitution to the aggrieved  
31 party for the damage or loss caused by his or her offense in

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1 an amount to be determined by the court. The court shall make  
2 such reparation or restitution a condition of probation,  
3 unless it determines that clear and compelling reasons exist  
4 to the contrary. If the court does not order restitution, or  
5 orders restitution of only a portion of the damages, as  
6 provided in s. 775.089, it shall state on the record in detail  
7 the reasons therefor.

8 (f) Effective July 1, 1994, and applicable for  
9 offenses committed on or after that date, make payment of the  
10 debt due and owing to a county or municipal detention facility  
11 under s. 951.032 for medical care, treatment, hospitalization,  
12 or transportation received by the felony probationer while in  
13 that detention facility. The court, in determining whether to  
14 order such repayment and the amount of such repayment, shall  
15 consider the amount of the debt, whether there was any fault  
16 of the institution for the medical expenses incurred, the  
17 financial resources of the felony probationer, the present and  
18 potential future financial needs and earning ability of the  
19 probationer, and dependents, and other appropriate factors.

20 (g) Support his or her legal dependents to the best of  
21 his or her ability.

22 (h) Make payment of the debt due and owing to the  
23 state under s. 960.17, subject to modification based on change  
24 of circumstances.

25 (i) Pay any application fee assessed under s.  
26 27.52(2)(a) and attorney's fees and costs assessed under s.  
27 938.29, subject to modification based on change of  
28 circumstances.

29 (j) Not associate with persons engaged in criminal  
30 activities.

31 (k)1. Submit to random testing as directed by the

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1 | correctional probation officer or the professional staff of  
2 | the treatment center where he or she is receiving treatment to  
3 | determine the presence or use of alcohol or controlled  
4 | substances.

5 |         2. If the offense was a controlled substance violation  
6 | and the period of probation immediately follows a period of  
7 | incarceration in the state correction system or if the offense  
8 | was a controlled substance violation and the offender had a  
9 | previous term of imprisonment for a  
10 | controlled-substance-related offense, the conditions shall  
11 | include a requirement that the offender submit to substance  
12 | abuse evaluation and comply with recommendations for  
13 | treatment, and submit to random substance abuse testing  
14 | intermittently throughout the term of supervision, upon the  
15 | direction of the correctional probation officer as defined in  
16 | s. 943.10(3).

17 |         (1) Be prohibited from possessing, carrying, or owning  
18 | any firearm unless authorized by the court and consented to by  
19 | the probation officer.

20 |         (m) Be prohibited from using intoxicants to excess or  
21 | using or possessing a controlled substance or drug ~~any drugs~~  
22 | ~~or narcotics~~ unless prescribed by a physician. The probationer  
23 | or community controllee shall not knowingly visit places where  
24 | intoxicants, drugs, or other dangerous substances are  
25 | unlawfully sold, dispensed, or used.

26 |         (n) Remain at liberty without violating the law.

27 |         (o) ~~(n)~~ Attend an HIV/AIDS awareness program consisting  
28 | of a class of not less than 2 hours or more than 4 hours in  
29 | length, the cost for which shall be paid by the offender, if  
30 | such a program is available in the county of the offender's  
31 | residence.

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1            ~~(p)(o)~~ Pay not more than \$1 per month during the term  
2 of probation or community control to a nonprofit organization  
3 established for the sole purpose of supplementing the  
4 rehabilitative efforts of the Department of Corrections.

5            (3)(a)1. The Department of Corrections may, at its  
6 discretion, instruct an offender to submit to electronic  
7 monitoring ~~electronically monitor an offender sentenced to~~  
8 ~~community control. In such cases, the electronic monitoring~~  
9 shall be considered to be supervisory instructions  
10 implementing the standard condition of supervision requiring  
11 the offender to report to probation officers as directed. This  
12 subparagraph does not limit the judge's discretion to order  
13 electronic monitoring in appropriate cases.

14            2. The Department of Corrections shall electronically  
15 monitor an offender sentenced to criminal quarantine community  
16 control 24 hours per day.

17            (b) Any offender placed on community control who  
18 violates the terms and conditions of community control and is  
19 restored to community control may be supervised by means of an  
20 electronic monitoring device or system.

21            (c) For those offenders being electronically  
22 monitored, the Department of Corrections shall develop  
23 procedures to determine, investigate, and report the  
24 offender's noncompliance with the terms and conditions of  
25 sentence 24 hours per day. All reports of noncompliance shall  
26 be immediately investigated by a community control officer.

27            (d) The Department of Corrections may contract with  
28 local law enforcement agencies to assist in the location and  
29 apprehension of offenders who are in noncompliance as reported  
30 by the electronic monitoring system. This contract is intended  
31 to provide the department a means for providing immediate

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1 investigation of noncompliance reports, especially after  
2 normal office hours.

3 Section 3. Section 948.032, Florida Statutes, is  
4 amended to read:

5 948.032 Condition of probation; restitution.--If a  
6 defendant is placed on probation, any restitution ordered  
7 under s. 775.089 shall be a condition of the probation. The  
8 court may revoke probation if the defendant fails to comply  
9 with the order. In determining whether to revoke probation,  
10 the court shall consider the defendant's employment status,  
11 earning ability, and financial resources; the willfulness of  
12 the defendant's failure to pay; and any other special  
13 circumstances that may have a bearing on the defendant's  
14 ability to pay. As provided in s. 948.06(5), it shall be the  
15 responsibility of the defendant to prove his or her inability  
16 to pay restitution ordered by the court.

17 Section 4. Effective July 1, 2004, and applicable to  
18 offenses or violations committed on or after that date,  
19 section 948.06, Florida Statutes, is amended to read:

20 948.06 Violation of probation or community control;  
21 revocation; modification; continuance; failure to pay  
22 restitution or cost of supervision.--

23 (1)(a) Whenever within the period of probation or  
24 community control there are reasonable grounds to believe that  
25 a probationer or offender in community control has violated  
26 his or her probation or community control in a material  
27 respect, any law enforcement officer who is aware of the  
28 probationary or community control status of the probationer or  
29 offender in community control or any parole or probation  
30 supervisor may arrest or request any county or municipal law  
31 enforcement officer to arrest such probationer or offender

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1 without warrant wherever found and forthwith return him or her  
2 to the court granting such probation or community control.

3 Local law enforcement officers shall assist the probation  
4 officer, upon request, in making warrantless arrests, taking  
5 offenders into custody, and transporting offenders to the  
6 county jail.

7 (b) Any committing magistrate may issue a warrant,  
8 upon the facts being made known to him or her by affidavit of  
9 one having knowledge of such facts, for the arrest of the  
10 probationer or offender, returnable forthwith before the court  
11 granting such probation or community control.

12 (c) Any parole or probation supervisor, any officer  
13 authorized to serve criminal process, or any peace officer of  
14 this state is authorized to serve and execute such warrant.

15 (d) Upon the filing of an affidavit alleging a  
16 violation of probation or community control and following  
17 issuance of a warrant under s. 901.02 or upon a warrantless  
18 arrest, the probationary period is tolled until the court  
19 enters a ruling on the violation. Notwithstanding the tolling  
20 of probation as provided in this subsection, the court shall  
21 retain jurisdiction over the offender for any violation of the  
22 conditions of probation or community control that is alleged  
23 to have occurred during the tolling period. The probation  
24 officer is permitted to continue to supervise any offender who  
25 remains available to the officer for supervision until the  
26 supervision expires pursuant to the order of probation or  
27 community control or until the court revokes or terminates the  
28 probation or community control, whichever comes first.

29 (2)(a) The court, upon the probationer or offender  
30 being brought before it, shall advise him or her of such  
31 charge of violation and, if such charge is admitted to be



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1 true, may forthwith revoke, modify, or continue the probation  
2 or community control or place the probationer into a community  
3 control program.

4       **(b)** If probation or community control is revoked, the  
5 court shall adjudge the probationer or offender guilty of the  
6 offense charged and proven or admitted, unless he or she has  
7 previously been adjudged guilty, and impose any sentence which  
8 it might have originally imposed before placing the  
9 probationer on probation or the offender into community  
10 control.

11       **(c)** If such violation of probation or community  
12 control is not admitted by the probationer or offender, the  
13 court may commit him or her or release him or her with or  
14 without bail to await further hearing, or it may dismiss the  
15 charge of probation or community control violation.

16       **(d)** If such charge is not at that time admitted by the  
17 probationer or offender and if it is not dismissed, the court,  
18 as soon as may be practicable, shall give the probationer or  
19 offender an opportunity to be fully heard on his or her behalf  
20 in person or by counsel.

21       **(e)** After such hearing, the court may revoke, modify,  
22 or continue the probation or community control or place the  
23 probationer into community control. If such probation or  
24 community control is revoked, the court shall adjudge the  
25 probationer or offender guilty of the offense charged and  
26 proven or admitted, unless he or she has previously been  
27 adjudged guilty, and impose any sentence which it might have  
28 originally imposed before placing the probationer or offender  
29 on probation or into community control.

30       **(f)** Notwithstanding s. 775.082, when a period of  
31 probation or community control has been tolled, upon

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1 revocation or modification of the probation or community  
2 control, the court may impose a sanction with a term that when  
3 combined with the amount of supervision served and tolled,  
4 exceeds the term permissible pursuant to s. 775.082 for a term  
5 up to the amount of the tolled period supervision.

6 (g) If the court dismisses an affidavit alleging a  
7 violation of probation or community control, the offender's  
8 probation or community control shall continue as previously  
9 imposed, and the offender shall receive credit for all tolled  
10 time against his or her term of probation or community  
11 control.

12 (h) The chief judge of each judicial circuit may  
13 direct the department to use a notification letter of a  
14 technical violation in lieu of a violation report, affidavit,  
15 and warrant when the violation is not a new felony or  
16 misdemeanor offense. Such direction must be in writing and  
17 specify the types of specific violations which are to be  
18 reported by a notification letter of a technical violation,  
19 any exceptions, and the required process for submission. At  
20 the direction of the chief judge, the department shall send  
21 the notification letter of a technical violation to the court.

22 (i)1. For each case in which the offender admits to  
23 committing a violation or is found to have committed a  
24 violation, the department shall provide the court with a  
25 recommendation as to disposition by the court. The department  
26 shall make a determination as to the reasons for its  
27 recommendation, and shall include an evaluation of the  
28 following factors:

29 a. The appropriateness or inappropriateness of  
30 community facilities, programs, or services for treatment or  
31 supervision of the offender.

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1           b. The ability or inability of the department to  
2 provide an adequate level of supervision of the offender in  
3 the community and a statement of what constitutes an adequate  
4 level of supervision.

5           c. The existence of other treatment modalities that  
6 the offender could use but that do not currently exist in the  
7 community.

8           2. The report must also include a summary of the  
9 offender's prior supervision history, including the offender's  
10 prior participation in treatment, educational, and vocational  
11 programs, and any other actions or circumstances of the  
12 offender which are relevant.

13           3. The court may specify whether the recommendation or  
14 report must be oral or written and may waive the requirement  
15 for a report in an individual case or a class of cases. This  
16 paragraph does not prohibit the department from making any  
17 other report or recommendation that is provided for by law or  
18 requested by the court.

19           ~~(3)~~(2)(a) When any state or local law enforcement  
20 agency investigates or arrests a person for committing, or  
21 attempting, soliciting, or conspiring to commit, a violation  
22 of s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 827.071,  
23 s. 847.0133, s. 847.0135, or s. 847.0145, the law enforcement  
24 agency shall contact the Department of Corrections to verify  
25 whether the person under investigation or under arrest is on  
26 probation, community control, parole, conditional release, or  
27 control release.

28           (b) If the law enforcement agency finds that the  
29 person under investigation or under arrest is on probation,  
30 community control, parole, conditional release, or control  
31 release, the law enforcement agency shall immediately notify

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1 the person's probation officer or release supervisor of the  
2 investigation or the arrest.

3       ~~(4)~~(3) When the court imposes a subsequent term of  
4 supervision following a revocation of probation or community  
5 control, it shall not provide credit for time served while on  
6 probation or community control toward any subsequent term of  
7 probation or community control. However, the court may not  
8 impose a subsequent term of probation or community control  
9 which, when combined with any amount of time served on  
10 preceding terms of probation or community control for offenses  
11 before the court for sentencing, would exceed the maximum  
12 penalty allowable as provided by s. 775.082. No part of the  
13 time that the defendant is on probation or in community  
14 control shall be considered as any part of the time that he or  
15 she shall be sentenced to serve.

16       ~~(5)~~(4) Notwithstanding any other provision of this  
17 section, a probationer or an offender in community control who  
18 is arrested for violating his or her probation or community  
19 control in a material respect may be taken before the court in  
20 the county or circuit in which the probationer or offender was  
21 arrested. That court shall advise him or her of such charge of  
22 a violation and, if such charge is admitted, shall cause him  
23 or her to be brought before the court which granted the  
24 probation or community control.

25       (a) If such violation is not admitted by the  
26 probationer or offender, the court may commit him or her or  
27 release him or her with or without bail to await further  
28 hearing. The court, as soon as is practicable, shall give the  
29 probationer or offender an opportunity to be fully heard on  
30 his or her behalf in person or by counsel.

31       (b) After such hearing, the court shall make findings

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1 of fact and forward the findings to the court which granted  
2 the probation or community control and to the probationer or  
3 offender or his or her attorney. The findings of fact by the  
4 hearing court are binding on the court which granted the  
5 probation or community control. Upon the probationer or  
6 offender being brought before it, the court which granted the  
7 probation or community control may revoke, modify, or continue  
8 the probation or community control or may place the  
9 probationer into community control as provided in this  
10 section.

11 (6)(5) Whenever the department submits a violation  
12 report to the court for failure to pay court-ordered  
13 obligations, the department shall include a statement by the  
14 probationer or offender on community control concerning his or  
15 her ability to pay. However, the violation report may be  
16 submitted without such statement if it cannot be obtained  
17 through department efforts. In any hearing in which the  
18 failure of a probationer or offender in community control to  
19 pay restitution or the cost of supervision as provided in s.  
20 948.09, as directed, is established by the state, if the  
21 probationer or offender asserts his or her inability to pay  
22 restitution or the cost of supervision, it is incumbent upon  
23 the probationer or offender to prove by clear and convincing  
24 evidence that he or she does not have the present resources  
25 available to pay restitution or the cost of supervision  
26 despite sufficient bona fide efforts legally to acquire the  
27 resources to do so. If the probationer or offender cannot pay  
28 restitution or the cost of supervision despite sufficient bona  
29 fide efforts, the court shall consider alternate measures of  
30 punishment other than imprisonment. Only if alternate measures  
31 are not adequate to meet the state's interests in punishment

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1 and deterrence may the court imprison a probationer or  
2 offender in community control who has demonstrated sufficient  
3 bona fide efforts to pay restitution or the cost of  
4 supervision.

5 ~~(7)(6)~~ Any parolee in a community control program who  
6 has allegedly violated the terms and conditions of such  
7 placement is subject to the provisions of ss. 947.22 and  
8 947.23.

9 ~~(8)(7)~~ Any provision of law to the contrary  
10 notwithstanding, whenever probation, community control, or  
11 control release, including the probationary, community control  
12 portion of a split sentence, is violated and the probation or  
13 community control is revoked, the offender, by reason of his  
14 or her misconduct, shall be deemed to have forfeited all  
15 gain-time or commutation of time for good conduct, as provided  
16 by law, earned up to the date of his or her release on  
17 probation, community control, or control release. This  
18 subsection does not deprive the prisoner of his or her right  
19 to gain-time or commutation of time for good conduct, as  
20 provided by law, from the date on which the prisoner is  
21 returned to prison. However, if a prisoner is sentenced to  
22 incarceration following termination from a drug punishment  
23 program imposed as a condition of probation, the sentence may  
24 include incarceration without the possibility of gain-time or  
25 early release for the period of time remaining in his or her  
26 treatment program placement term.

27 Section 5. Section 948.061, Florida Statutes, is  
28 created to read:

29 948.061 Identifying, assessing, and monitoring certain  
30 high-risk offenders on community supervision; providing  
31 cumulative criminal and supervision histories to the court.--

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1           (1) By December 1, 2004, the department shall develop  
2 a graduated risk assessment and alert system that continuously  
3 identifies, assesses, and closely monitors the population of  
4 offenders placed on probation or community control who have:

5           (a) Previously been placed on probation or community  
6 control and who have a history of committing multiple  
7 community supervision violations in this state or in other  
8 jurisdictions or who have previously been incarcerated in this  
9 state or in other jurisdictions; and

10           (b) Have experienced more than one of the following  
11 risk factors that could potentially make the offender more  
12 likely to pose a danger to others:

- 13           1. Attempted suicide or severe depression;  
14           2. Marital instability or history of domestic  
15 violence;  
16           3. History of substance abuse;  
17           4. Unemployment or substantial financial difficulties;  
18           5. History of violence, particularly involving  
19 strangers; or  
20           6. Any other risk factor identified by the department.

21           (2) Recognizing that there may be a propensity for  
22 these offenders with extensive criminal histories and multiple  
23 risk factors to pose a serious threat to the community, the  
24 department shall consider the cumulative impact of these risk  
25 factors and, if necessary, place these offenders on an  
26 elevated alert status and provide a high level of supervision  
27 for these offenders until the situation  
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