

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Kottkamp offered the following:

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3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Subsection (17) is added to section 901.15,

6 Florida Statutes, to read:

7 901.15 When arrest by officer without warrant is  
8 lawful.--A law enforcement officer may arrest a person without a  
9 warrant when:

10 (17) The officer is making an arrest of a person on  
11 probation, community control, or parole pursuant to s. 948.06(1)  
12 or s. 947.22.

13 Section 2. Subsection (2) of section 921.187, Florida  
14 Statutes, is amended, and paragraph (a) of subsection (1) of  
15 said section is reenacted for the purpose of incorporating the

757721

Amendment No. (for drafter's use only)

16 amendment to section 948.01, Florida Statutes, in a reference  
17 thereto, to read:

18 921.187 Disposition and sentencing; alternatives;  
19 restitution.--

20 (1) The alternatives provided in this section for the  
21 disposition of criminal cases shall be used in a manner that  
22 will best serve the needs of society, punish criminal offenders,  
23 and provide the opportunity for rehabilitation.

24 (a) If the offender does not receive a state prison  
25 sentence, the court may:

26 1. Impose a split sentence whereby the offender is to be  
27 placed on probation upon completion of any specified period of  
28 such sentence, which period may include a term of years or less.

29 2. Make any other disposition that is authorized by law.

30 3. Place the offender on probation with or without an  
31 adjudication of guilt pursuant to s. 948.01.

32 4. Impose a fine and probation pursuant to s. 948.011 when  
33 the offense is punishable by both a fine and imprisonment and  
34 probation is authorized.

35 5. Place the offender into community control requiring  
36 intensive supervision and surveillance pursuant to chapter 948.

37 6. Impose, as a condition of probation or community  
38 control, a period of treatment which shall be restricted to a  
39 county facility, a Department of Corrections probation and  
40 restitution center, a probation program drug punishment  
41 treatment community, or a community residential or  
42 nonresidential facility, excluding a community correctional  
43 center as defined in s. 944.026, which is owned and operated by

757721

Amendment No. (for drafter's use only)

44 any qualified public or private entity providing such services.  
45 Before admission to such a facility, the court shall obtain an  
46 individual assessment and recommendations on the appropriate  
47 treatment needs, which shall be considered by the court in  
48 ordering such placements. Placement in such a facility, except  
49 for a county residential probation facility, may not exceed 364  
50 days. Placement in a county residential probation facility may  
51 not exceed 3 years. Early termination of placement may be  
52 recommended to the court, when appropriate, by the center  
53 supervisor, the supervising probation officer, or the probation  
54 program manager.

55 7. Sentence the offender pursuant to s. 922.051 to  
56 imprisonment in a county jail when a statute directs  
57 imprisonment in a state prison, if the offender's cumulative  
58 sentence, whether from the same circuit or from separate  
59 circuits, is not more than 364 days.

60 8. Sentence the offender who is to be punished by  
61 imprisonment in a county jail to a jail in another county if  
62 there is no jail within the county suitable for such prisoner  
63 pursuant to s. 950.01.

64 9. Require the offender to participate in a work-release  
65 or educational or technical training program pursuant to s.  
66 951.24 while serving a sentence in a county jail, if such a  
67 program is available.

68 10. Require the offender to perform a specified public  
69 service pursuant to s. 775.091.

70 11. Require the offender who violates chapter 893 or  
71 violates any law while under the influence of a controlled

757721

Amendment No. (for drafter's use only)

72 substance or alcohol to participate in a substance abuse  
73 program.

74 12.a. Require the offender who violates any criminal  
75 provision of chapter 893 to pay an additional assessment in an  
76 amount up to the amount of any fine imposed, pursuant to ss.  
77 938.21 and 938.23.

78 b. Require the offender who violates any provision of s.  
79 893.13 to pay an additional assessment in an amount of \$100,  
80 pursuant to ss. 938.25 and 943.361.

81 13. Impose a split sentence whereby the offender is to be  
82 placed in a county jail or county work camp upon the completion  
83 of any specified term of community supervision.

84 14. Impose split probation whereby upon satisfactory  
85 completion of half the term of probation, the Department of  
86 Corrections may place the offender on administrative probation  
87 pursuant to s. 948.01 for the remainder of the term of  
88 supervision.

89 15. Require residence in a state probation and restitution  
90 center or private drug treatment program for offenders on  
91 community control or offenders who have violated conditions of  
92 probation.

93 16. Impose any other sanction which is provided within the  
94 community and approved as an intermediate sanction by the county  
95 public safety coordinating council as described in s. 951.26.

96 17. Impose, as a condition of community control,  
97 probation, or probation following incarceration, a requirement  
98 that an offender who has not obtained a high school diploma or  
99 high school equivalency diploma or who lacks basic or functional

757721

Amendment No. (for drafter's use only)

100 literacy skills, upon acceptance by an adult education program,  
101 make a good faith effort toward completion of such basic or  
102 functional literacy skills or high school equivalency diploma,  
103 as defined in s. 1003.435, in accordance with the assessed adult  
104 general education needs of the individual offender.

105 (2) Unless agreed to by the state attorney as part of a  
106 negotiated plea or sentence, an offender may not be placed on ~~in~~  
107 community control or probation if:

108 (a) Convicted of or adjudication is withheld for a  
109 disqualifying forcible felony as defined in s. 776.08; and

110 (b) Previously convicted of or adjudication was withheld  
111 for a disqualifying forcible felony as defined in s. 776.08.  
112

113 Nothing in this subsection prohibits placement of certain  
114 inmates on community control pursuant to s. 947.1747. For  
115 purposes of this subsection, the term "disqualifying a forcible  
116 felony" means a forcible felony defined in s. 776.08, excluding  
117 burglary under s. 810.02(4) and aggravated assault committed  
118 without a deadly weapon under s. 784.021(1)(b) does not include  
119 manslaughter or burglary.

120 Section 3. Section 903.0473, Florida Statutes, is created  
121 to read:

122 903.0473 Probation appearance bond.--As a condition of  
123 probation, community control, or any other court-ordered  
124 community supervision authorized under chapter 948, the court  
125 may order the posting of a bond to secure the appearance of the  
126 defendant at any subsequent court proceeding. The appearance  
127 bond shall be filed by the bail agent with the sheriff who shall

757721

Amendment No. (for drafter's use only)

128 provide a copy to the clerk of court. Upon 72 hours' notice by  
129 the clerk, the bail agent shall produce to the court the person  
130 on probation, community control, or other court-ordered  
131 community supervision to the court. The bail agent shall  
132 surrender to the sheriff the person on probation, community  
133 control or other court-ordered community supervision upon notice  
134 by the probation officer that the person has violated the terms  
135 of probation, community control, or other court-ordered  
136 community supervision. If the bail agent fails to produce the  
137 defendant to the court at the time and place properly noticed,  
138 the bond shall be estreated and forfeited according to the  
139 procedures set forth in this chapter and chapter 648. The  
140 defendant's failure to appear shall be the sole grounds for  
141 forfeiture and estreatment of the appearance bond. Where not  
142 inconsistent with this subsection, this chapter and chapter 648  
143 shall regulate the relationship between the bail agent and  
144 probationer.

145 Section 4. Subsection (2) of section 947.22, Florida  
146 Statutes, is amended to read:

147 947.22 Authority to arrest parole violators with or  
148 without warrant.--

149 (2) Any parole and probation officer, when she or he has  
150 reasonable ground to believe that a parolee, control releasee,  
151 or conditional releasee has violated the terms and conditions of  
152 her or his parole, control release, or conditional release in a  
153 material respect, has the right to arrest, or to request any law  
154 enforcement officer to arrest, the releasee or parolee without  
155 warrant and bring her or him forthwith before one or more

757721

Amendment No. (for drafter's use only)

156 commissioners or a duly authorized representative of the Parole  
157 Commission or Control Release Authority; and proceedings shall  
158 thereupon be had as provided herein when a warrant has been  
159 issued by a member of the commission or authority or a duly  
160 authorized representative of the commission or authority. Upon  
161 request, local law enforcement officers may assist the probation  
162 officer in making a warrantless arrest of a releasee or parolee,  
163 taking a releasee or parolee into custody, and transporting a  
164 releasee or parolee to the county jail.

165 Section 5. Subsections (4) and (10) of section 948.01,  
166 Florida Statutes, are amended, and subsection (9), paragraph (b)  
167 of subsection (11), and paragraph (b) of subsection (13) of said  
168 section are reenacted for the purpose of incorporating the  
169 amendment to s. 948.06, Florida Statutes, in references thereto,  
170 to read:

171 948.01 When court may place defendant on probation or into  
172 community control.--

173 (4) The sanctions imposed by order of the court shall be  
174 commensurate with the seriousness of the offense. When community  
175 control or a program of public service is ordered by the court,  
176 the duration of community control supervision or public service  
177 may not be longer than the sentence that could have been imposed  
178 if the offender had been committed for the offense ~~or a period~~  
179 ~~not to exceed 2 years, whichever is less.~~ When restitution or  
180 public service is ordered by the court, the amount of  
181 restitution or public service may not be greater than an amount  
182 which the offender could reasonably be expected to pay or  
183 perform.

757721

Amendment No. (for drafter's use only)

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

187 (10) Unless agreed to by the state attorney as part of a  
188 negotiated plea or sentence, an offender may not be placed on ~~in~~  
189 community control or probation if:

190 (a) Convicted of or has adjudication withheld for a  
191 disqualifying forcible felony as defined in s. 776.08, and

192 (b) Previously convicted of or had adjudication withheld  
193 for a disqualifying forcible felony as defined in s. 776.08.

194  
195 Nothing in this subsection prohibits placement of certain  
196 inmates on community control pursuant to s. 947.1747. For the  
197 purposes of this subsection, a "disqualifying forcible felony"  
198 means a forcible felony defined in s. 776.08, excluding burglary  
199 under s. 810.02(4) and aggravated assault committed without a  
200 deadly weapon under s. 784.021(1)(b) ~~does not include~~  
201 manslaughter or burglary.

202 (11) The court may also impose a split sentence whereby  
203 the defendant is sentenced to a term of probation which may be  
204 followed by a period of incarceration or, with respect to a  
205 felony, into community control, as follows:

206 (b) If the offender does not meet the terms and conditions  
207 of probation or community control, the court may revoke, modify,  
208 or continue the probation or community control as provided in s.  
209 948.06. If the probation or community control is revoked, the  
210 court may impose any sentence that it could have imposed at the  
211 time the offender was placed on probation or community control.

757721



Amendment No. (for drafter's use only)

212 The court may not provide credit for time served for any portion  
213 of a probation or community control term toward a subsequent  
214 term of probation or community control. However, the court may  
215 not impose a subsequent term of probation or community control  
216 which, when combined with any amount of time served on preceding  
217 terms of probation or community control for offenses pending  
218 before the court for sentencing, would exceed the maximum  
219 penalty allowable as provided in s. 775.082. Such term of  
220 incarceration shall be served under applicable law or county  
221 ordinance governing service of sentences in state or county  
222 jurisdiction. This paragraph does not prohibit any other  
223 sanction provided by law.

224 (13) If it appears to the court upon a hearing that the  
225 defendant is a chronic substance abuser whose criminal conduct  
226 is a violation of s. 893.13(2)(a) or (6)(a), the court may  
227 either adjudge the defendant guilty or stay and withhold the  
228 adjudication of guilt; and, in either case, it may stay and  
229 withhold the imposition of sentence and place the defendant on  
230 drug offender probation.

231 (b) Offenders placed on drug offender probation are  
232 subject to revocation of probation as provided in s. 948.06.

233 Section 6. Effective July 1, 2004, subsection (1) of  
234 section 948.03, Florida Statutes, as amended by section 136 of  
235 chapter 2003-402, Laws of Florida, is amended to read:

236 948.03 Terms and conditions of probation or community  
237 control.--

238 (1) The court shall determine the terms and conditions of  
239 probation or community control. Conditions specified in

757721

Amendment No. (for drafter's use only)

240 paragraphs (a)-(o) ~~(a)-(m)~~ do not require oral pronouncement at  
241 the time of sentencing and may be considered standard conditions  
242 of probation. Conditions specified in paragraphs (a)-(o) ~~(a)-(m)~~  
243 and (2)(a) do not require oral pronouncement at sentencing and  
244 may be considered standard conditions of community control.  
245 These conditions may include among them the following, that the  
246 probationer or offender in community control shall:

247 (a) Report to the probation officer and ~~parole supervisors~~  
248 as directed. The offender shall provide a full, truthful, and  
249 complete oral or written report each month. The report must  
250 include, but need not be limited to, the offender's employment  
251 status, monthly earnings, and financial ability. At the  
252 discretion of the department, the reporting requirement may  
253 include electronic monitoring.

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

256 (c) Work faithfully at suitable employment insofar as may  
257 be possible.

258 (d) Remain within a specified place.

259 (e) Make reparation or restitution to the aggrieved party  
260 for the damage or loss caused by his or her offense in an amount  
261 to be determined by the court. The court shall make such  
262 reparation or restitution a condition of probation, unless it  
263 determines that clear and compelling reasons exist to the  
264 contrary. If the court does not order restitution, or orders  
265 restitution of only a portion of the damages, as provided in s.  
266 775.089, it shall state on the record in detail the reasons  
267 therefor.

757721

Amendment No. (for drafter's use only)

268 (f) Effective July 1, 1994, and applicable for offenses  
269 committed on or after that date, make payment of the debt due  
270 and owing to a county or municipal detention facility under s.  
271 951.032 for medical care, treatment, hospitalization, or  
272 transportation received by the felony probationer while in that  
273 detention facility. The court, in determining whether to order  
274 such repayment and the amount of such repayment, shall consider  
275 the amount of the debt, whether there was any fault of the  
276 institution for the medical expenses incurred, the financial  
277 resources of the felony probationer, the present and potential  
278 future financial needs and earning ability of the probationer,  
279 and dependents, and other appropriate factors.

280 (g) Support his or her legal dependents to the best of his  
281 or her ability.

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

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

288 (j) Not associate with persons engaged in criminal  
289 activities.

290 (k)1. Submit to random testing as directed by the  
291 correctional probation officer or the professional staff of the  
292 treatment center where he or she is receiving treatment to  
293 determine the presence or use of alcohol or controlled  
294 substances.

757721

Amendment No. (for drafter's use only)

295           2. If the offense was a controlled substance violation and  
296 the period of probation immediately follows a period of  
297 incarceration in the state correction system or if the offense  
298 was a controlled substance violation and the offender has  
299 previously served a term of imprisonment for an offense  
300 involving a controlled substance, the conditions shall include a  
301 requirement that the offender submit, no less than once every  
302 calendar month, to random substance abuse testing ~~intermittently~~  
303 throughout the term of supervision, upon the direction of the  
304 correctional probation officer as defined in s. 943.10(3).

305           (1) Be prohibited from possessing, carrying, or owning any  
306 firearm unless authorized by the court and consented to by the  
307 probation officer.

308           (m) Be prohibited from using intoxicants to excess or  
309 using or possessing a controlled substance or drug ~~any drugs or~~  
310 ~~narcotics~~ unless prescribed by a physician. The probationer or  
311 community controllee shall not knowingly visit places where  
312 intoxicants, drugs, or other dangerous substances are unlawfully  
313 sold, dispensed, or used.

314           (n) Remain on supervision without violating the law.

315           (o) For an offense involving a victim, not have contact  
316 with the victim unless authorized to do so by the court. If the  
317 court authorizes the defendant to have contact with the victim  
318 over the objection of the victim or the state attorney, the  
319 court shall state on the record the reasons therefor.

320           (p) ~~(n)~~ Attend an HIV/AIDS awareness program consisting of  
321 a class of not less than 2 hours or more than 4 hours in length,

757721

Amendment No. (for drafter's use only)

322 the cost for which shall be paid by the offender, if such a  
323 program is available in the county of the offender's residence.

324 (q)~~(e)~~ Pay not more than \$1 per month during the term of  
325 probation or community control to a nonprofit organization  
326 established for the sole purpose of supplementing the  
327 rehabilitative efforts of the Department of Corrections.

328 Section 7. Section 948.032, Florida Statutes, is amended  
329 to read:

330 948.032 Condition of probation; restitution.--If a  
331 defendant is placed on probation, any restitution ordered under  
332 s. 775.089 shall be a condition of the probation. The court may  
333 revoke probation if the defendant fails to comply with the  
334 order. In determining whether to revoke probation, the court  
335 shall consider the defendant's employment status, earning  
336 ability, and financial resources; the willfulness of the  
337 defendant's failure to pay; and any other special circumstances  
338 that may have a bearing on the defendant's ability to pay. As  
339 provided in s. 948.06(5), it is the responsibility of the  
340 defendant to prove his or her inability to pay court-ordered  
341 restitution.

342 Section 8. Effective July 1, 2004, and applicable to  
343 offenses committed on or after that date, section 948.06,  
344 Florida Statutes, is amended to read:

345 948.06 Violation of probation or community control;  
346 revocation; modification; continuance; failure to pay  
347 restitution or cost of supervision.--

348 (1) (a) Whenever within the period of probation or  
349 community control there are reasonable grounds to believe that a

757721

Amendment No. (for drafter's use only)

350 probationer or offender on ~~in~~ community control has violated his  
351 or her probation or community control in a material respect, any  
352 law enforcement officer who is aware of the probationary or  
353 community control status of the probationer or offender in  
354 community control or any parole or probation supervisor may  
355 arrest or request any county or municipal law enforcement  
356 officer to arrest such probationer or offender without warrant  
357 wherever found and forthwith return him or her to the court  
358 granting such probation or community control. Upon request,  
359 local law enforcement officers may assist the probation officer  
360 in making a warrantless arrest of a probationer or community  
361 controllee, taking a probationer or community controllee into  
362 custody, and transporting a probationer or community controllee  
363 to the county jail. Any committing magistrate may issue a  
364 warrant, upon the facts being made known to him or her by  
365 affidavit of one having knowledge of such facts, for the arrest  
366 of the probationer or offender, returnable forthwith before the  
367 court granting such probation or community control. Any parole  
368 or probation supervisor, any officer authorized to serve  
369 criminal process, or any peace officer of this state is  
370 authorized to serve and execute such warrant.

371 (b) Upon the filing of an affidavit alleging a violation  
372 of probation or community control and following issuance of a  
373 warrant under s. 901.02 or upon warrantless arrest, the  
374 probationary period is tolled until the court enters a ruling on  
375 the violation. Notwithstanding the tolling of probation as  
376 provided in this subsection, the court shall retain jurisdiction  
377 over the offender for any violation of the conditions of

757721

Amendment No. (for drafter's use only)

378 probation or community control that is alleged to have occurred  
379 during the tolling period. The probation officer is permitted to  
380 continue to supervise any offender who remains available to the  
381 officer for supervision until the supervision expires pursuant  
382 to the order of probation or community control or until the  
383 court revokes or terminates the probation or community control,  
384 whichever comes first.

385 (2) The court, upon the probationer or offender being  
386 brought before it, shall advise him or her of such charge of  
387 violation. ~~and,~~

388 (a) If such violation of probation or community control  
389 ~~charge~~ is admitted to be true, the court may forthwith revoke,  
390 modify, or continue the probation or community control or place  
391 the probationer into a community control program. If probation  
392 or community control is revoked, the court shall adjudge the  
393 probationer or offender guilty of the offense charged and proven  
394 or admitted, unless he or she has previously been adjudged  
395 guilty, and impose any sentence which it might have originally  
396 imposed before placing the probationer on probation or the  
397 offender into community control.

398 (b) If such violation of probation or community control is  
399 not admitted by the probationer or offender, the court may  
400 commit him or her or release him or her with or without bail to  
401 await further hearing, except that a defendant who is on  
402 probation or community control for a high-risk felony, as  
403 defined in subsection (10), must be held without bail for an  
404 alleged violation that involves a nonmonetary condition of  
405 supervision ~~or it may dismiss the charge of probation or~~

757721

Amendment No. (for drafter's use only)

406 ~~community control violation. If such charge is not at that time~~  
407 ~~admitted by the probationer or offender and if it is not~~  
408 ~~dismissed,~~ The court, as soon as ~~may be~~ practicable, shall give  
409 the probationer or offender an opportunity to be fully heard on  
410 his or her behalf in person or by counsel. The state shall be  
411 represented by the state attorney at such hearing and shall be  
412 given an opportunity to be heard and to present evidence. After  
413 such hearing, the court may revoke, modify, or continue the  
414 probation or community control or place the probationer into  
415 community control. If such probation or community control is  
416 revoked, the court shall adjudge the probationer or offender  
417 guilty of the offense charged and proven or admitted, unless he  
418 or she has previously been adjudged guilty, and impose any  
419 sentence which it might have originally imposed before placing  
420 the probationer or offender on probation or into community  
421 control.

422 (c) Notwithstanding s. 775.082, when a period of probation  
423 or community control has been tolled, upon revocation or  
424 modification of the probation or community control, the court  
425 may impose a sanction with a term that when combined with the  
426 amount of supervision served and tolled, exceeds the term  
427 permissible pursuant to s. 775.082 for a term up to the amount  
428 of the tolled period supervision.

429 (d) If the court dismisses an affidavit alleging a  
430 violation of probation or community control, the offender's  
431 probation or community control shall continue as previously  
432 imposed, and the offender shall receive credit for all tolled  
433 time against his or her term of probation or community control.

757721



Amendment No. (for drafter's use only)

434 (e) For any violation in which the court indicates it will  
435 consider a downward departure sentence below the lowest  
436 permissible sentence of the Criminal Punishment Code, the  
437 department shall provide to the court a list of programs and  
438 services available for the court to include in the defendant's  
439 sentence on the violation. The list from the department must  
440 include, but need not be limited to, evaluation and treatment  
441 programs, residential treatment facilities, educational or  
442 vocational training programs, substance abuse testing,  
443 electronic monitoring, and community resources that would assist  
444 the offender in successful completion of his or her period of  
445 community supervision.

446 (3)+2-(a) When any state or local law enforcement agency  
447 investigates or arrests a person for committing, or attempting,  
448 soliciting, or conspiring to commit, a violation of s. 787.025,  
449 chapter 794, s. 796.03, s. 800.04, s. 827.071, s. 847.0133, s.  
450 847.0135, or s. 847.0145, the law enforcement agency shall  
451 contact the Department of Corrections to verify whether the  
452 person under investigation or under arrest is on probation,  
453 community control, parole, conditional release, or control  
454 release.

455 (b) If the law enforcement agency finds that the person  
456 under investigation or under arrest is on probation, community  
457 control, parole, conditional release, or control release, the  
458 law enforcement agency shall immediately notify the person's  
459 probation officer or release supervisor of the investigation or  
460 the arrest.

757721

Amendment No. (for drafter's use only)

461        ~~(4)~~<sup>(3)</sup> When the court imposes a subsequent term of  
462 supervision following a revocation of probation or community  
463 control, it shall not provide credit for time served while on  
464 probation or community control toward any subsequent term of  
465 probation or community control. However, the court may not  
466 impose a subsequent term of probation or community control  
467 which, when combined with any amount of time served on preceding  
468 terms of probation or community control for offenses before the  
469 court for sentencing, would exceed the maximum penalty allowable  
470 as provided by s. 775.082. No part of the time that the  
471 defendant is on probation or in community control shall be  
472 considered as any part of the time that he or she shall be  
473 sentenced to serve.

474        ~~(5)~~<sup>(4)</sup> Notwithstanding any other provision of this  
475 section, a probationer or an offender in community control who  
476 is arrested for violating his or her probation or community  
477 control in a material respect may be taken before the court in  
478 the county or circuit in which the probationer or offender was  
479 arrested. That court shall advise him or her of such charge of a  
480 violation and, if such charge is admitted, shall cause him or  
481 her to be brought before the court which granted the probation  
482 or community control.

483        (a) If such violation is not admitted by the probationer  
484 or offender, the court may commit him or her or release him or  
485 her with or without bail to await further hearing. The court, as  
486 soon as is practicable, shall give the probationer or offender  
487 an opportunity to be fully heard on his or her behalf in person  
488 or by counsel.

757721

Amendment No. (for drafter's use only)

489        (b) After such hearing, the court shall make findings of  
490 fact and forward the findings to the court which granted the  
491 probation or community control and to the probationer or  
492 offender or his or her attorney. The findings of fact by the  
493 hearing court are binding on the court which granted the  
494 probation or community control. Upon the probationer or offender  
495 being brought before it, the court which granted the probation  
496 or community control may revoke, modify, or continue the  
497 probation or community control or may place the probationer into  
498 community control as provided in this section.

499        (6)-(5) Whenever the department submits a violation report  
500 to the court involving allegations of failure to pay court-  
501 ordered obligations, the department shall include a statement by  
502 the probationer or offender on community control concerning his  
503 or her ability to pay such obligations. In any hearing in which  
504 the failure of a probationer or offender in community control to  
505 pay restitution or the cost of supervision as provided in s.  
506 948.09, as directed, is established by the state, if the  
507 probationer or offender asserts his or her inability to pay  
508 restitution or the cost of supervision, it is incumbent upon the  
509 probationer or offender to prove by clear and convincing  
510 evidence that he or she does not have the present resources  
511 available to pay restitution or the cost of supervision despite  
512 sufficient bona fide efforts legally to acquire the resources to  
513 do so. If the probationer or offender cannot pay restitution or  
514 the cost of supervision despite sufficient bona fide efforts,  
515 the court shall consider alternate measures of punishment other  
516 than imprisonment. Only if alternate measures are not adequate

757721

Amendment No. (for drafter's use only)

517 | to meet the state's interests in punishment and deterrence may  
518 | the court imprison a probationer or offender in community  
519 | control who has demonstrated sufficient bona fide efforts to pay  
520 | restitution or the cost of supervision.

521 |       ~~(7)~~(6) Any parolee in a community control program who has  
522 | allegedly violated the terms and conditions of such placement is  
523 | subject to the provisions of ss. 947.22 and 947.23.

524 |       ~~(8)~~(7) Any provision of law to the contrary  
525 | notwithstanding, whenever probation, community control, or  
526 | control release, including the probationary, community control  
527 | portion of a split sentence, is violated and the probation or  
528 | community control is revoked, the offender, by reason of his or  
529 | her misconduct, shall be deemed to have forfeited all gain-time  
530 | or commutation of time for good conduct, as provided by law,  
531 | earned up to the date of his or her release on probation,  
532 | community control, or control release. This subsection does not  
533 | deprive the prisoner of his or her right to gain-time or  
534 | commutation of time for good conduct, as provided by law, from  
535 | the date on which the prisoner is returned to prison. However,  
536 | if a prisoner is sentenced to incarceration following  
537 | termination from a drug punishment program imposed as a  
538 | condition of probation, the sentence may include incarceration  
539 | without the possibility of gain-time or early release for the  
540 | period of time remaining in his or her treatment program  
541 | placement term.

542 |       (9) (a) The court shall conduct a danger to the community  
543 | hearing as provided in paragraph (b) to determine whether the  
544 | defendant poses a risk of physical harm to persons if:

757721

Amendment No. (for drafter's use only)

545 1. The defendant is on probation or community control for  
546 a high-risk felony; or

547 2. The defendant is on probation or community control for  
548 any felony and has been adjudged to be in violation of  
549 nonmonetary conditions of probation or community control for the  
550 current felony and has been previously convicted of, or had  
551 adjudication of guilt withheld for, a high-risk felony, a  
552 forcible felony as defined in s. 776.08, or any violation of s.  
553 800.04.

554 (b) In a danger to the community hearing, the court may  
555 conclude that a defendant poses a risk of physical harm to  
556 persons based on factors, including, but not limited to:

557 1. The defendant's sentence for the felony included court-  
558 ordered treatment for abuse of illegal controlled substances and  
559 the present violation was committed for the purpose of acquiring  
560 controlled substances.

561 2. The defendant has two prior nonmonetary violations of  
562 the current supervision and has:

563 a. Committed a new felony offense, excluding felony  
564 violations of chapters 815, 817, 818, 823, 831, 832, 837, 838,  
565 839, 849, and 896; or

566 b. Committed a new misdemeanor offense involving the use  
567 or threatened use of force or violence.

568 3. The defendant has three prior nonmonetary violations of  
569 the current supervision.

570 4. The defendant is in violation of a condition of  
571 supervision involving contacting a victim against the victim's

757721

Amendment No. (for drafter's use only)

572 will or involving contacting a minor in violation of s.  
573 948.03(5), if the felony was committed against a minor.

574  
575 At the conclusion of the danger to the community hearing, the  
576 court shall state its finding as to whether the defendant poses  
577 a risk of physical harm to persons. A finding that the defendant  
578 poses a risk of physical harm to persons must be established by  
579 a preponderance of the evidence. If the court finds that the  
580 defendant does not pose a risk of physical harm to persons, the  
581 court shall state its reasons for such finding on the record.

582 (10) For purposes of this chapter, the term "high-risk  
583 felony" means lewd or lascivious battery as defined in s.  
584 800.04, an act of terrorism as defined in s. 775.30, or any  
585 forcible felony defined in s. 776.08, excluding burglary under  
586 s. 810.02(4) and aggravated assault committed without a deadly  
587 weapon under s. 784.021(1)(b).

588 (11) The state attorney shall represent the state in all  
589 hearings described in this chapter regarding persons on  
590 probation or community control. The state shall be given the  
591 opportunity to be heard and to present evidence to establish the  
592 defendant's violation and the facts or circumstances which  
593 support a finding that a defendant poses a threat of physical  
594 harm to persons.

595 Section 9. Section 948.062, Florida Statutes, is created  
596 to read:

597 948.062 Reviewing and reporting serious offenses committed  
598 by offenders placed on community supervision.--

757721

Amendment No. (for drafter's use only)

599       (1) The department shall review the circumstances related  
600 to offenders placed on community supervision who have been  
601 arrested while on supervision for the following serious  
602 offenses:

603       (a) Any murder as provided in s. 782.04;

604       (b) Any sexual battery as provided in s. 794.011 or s.  
605 794.023; or

606       (c) Any lewd and lascivious battery or lewd and lascivious  
607 molestation as provided in s. 800.04(4) or s. 800.04(5);

608  
609 The department's review shall document whether the supervision  
610 of the offender met enumerated rules, policies, and procedures  
611 and whether supervision practices were followed.

612       Section 10. Subsection (2) of section 948.09, Florida  
613 Statutes, is amended to read:

614       948.09 Payment for cost of supervision and  
615 rehabilitation.--

616       (2) Any person being electronically monitored by the  
617 department as a result of placement on community control shall  
618 be required to pay as a surcharge an amount that may not exceed  
619 the full cost of the monitoring service in addition to the cost  
620 of supervision fee as directed by the sentencing court. The  
621 department is authorized to contract with a private entity to  
622 provide the services necessary to implement or to facilitate any  
623 provision of this chapter. The department is authorized to  
624 contract with a private entity for the collection and  
625 disposition of the surcharge. Such contract may allow for  
626 reasonable costs to the contractor associated with the

757721

Amendment No. (for drafter's use only)

627 | collection of the surcharge. The surcharge may ~~shall~~ be  
628 | deposited in the Operating Trust Fund to be used by the  
629 | department for purchasing and maintaining electronic monitoring  
630 | devices.

631 | Section 11. Subsections (7) and (9) of section 948.10,  
632 | Florida Statutes, are amended to read:

633 | 948.10 Community control programs.--

634 | (7) If an offender is placed on ~~sentenced to~~ community  
635 | control or probation by the court and the offender is ineligible  
636 | for to be placed on community control or probation as provided  
637 | in s. 948.01(10), the department shall:

638 | (a) Review and verify whether an ineligible offender was  
639 | placed on community control or probation.

640 | (b) Within 30 days after receipt of the order, notify the  
641 | sentencing judge, the state attorney, and the Attorney General  
642 | that the offender was ineligible for placement on community  
643 | control or probation.

644 | (c) Provide a quarterly report to the chief judge and the  
645 | state attorney of each circuit citing the number of ineligible  
646 | offenders placed on community control or probation within that  
647 | circuit.

648 | (d) Provide an annual report to the Governor, the  
649 | President of the Senate, the Speaker of the House of  
650 | Representatives, and the Chief Justice of the Supreme Court on  
651 | the placement of ineligible offenders on community control or  
652 | probation in order to assist in preparing judicial education  
653 | programs or for any other purpose.

757721



Amendment No. (for drafter's use only)

654 (9) In its annual report to the Governor, the President of  
655 the Senate, and the Speaker of the House of Representatives  
656 under s. 20.315(5), the department shall include a detailed  
657 analysis of the community control and probation programs ~~program~~  
658 and the department's specific efforts to protect the public from  
659 offenders placed on community control or probation. The analysis  
660 must include, but need not be limited to, specific information  
661 on the department's ability to meet minimum officer-to-offender  
662 contact standards, the number and types of crimes committed by  
663 offenders on community control and probation, and the level of  
664 community supervision provided.

665 Section 12. Section 958.14, Florida Statutes, is amended  
666 to read:

667 958.14 Violation of probation or community control  
668 program.--A violation or alleged violation of probation or the  
669 terms of a community control program shall subject the youthful  
670 offender to the provisions of s. 948.06(1) and (2). However, no  
671 youthful offender shall be committed to the custody of the  
672 department for a substantive violation for a period longer than  
673 the maximum sentence for the offense for which he or she was  
674 found guilty, with credit for time served while incarcerated, or  
675 for a technical or nonsubstantive violation for a period longer  
676 than 6 years or for a period longer than the maximum sentence  
677 for the offense for which he or she was found guilty, whichever  
678 is less, with credit for time served while incarcerated.

679 Section 13. Section 921.0017, Florida Statutes, is amended  
680 to read:

757721

Amendment No. (for drafter's use only)

681           921.0017 Credit upon recommitment of offender serving  
682 split sentence.--Effective for offenses committed on or after  
683 January 1, 1994, if an offender's probation or community control  
684 is revoked and the offender is serving a split sentence pursuant  
685 to s. 948.01, upon recommitment to the Department of  
686 Corrections, the court shall order credit for time served in  
687 state prison or county jail only, without considering any type  
688 of gain-time earned before release to supervision, or any type  
689 of sentence reduction granted to avoid prison overcrowding,  
690 including, but not limited to, any sentence reduction resulting  
691 from administrative gain-time, provisional credits, or control  
692 release. The court shall determine the amount of jail-time  
693 credit to be awarded for time served between the date of arrest  
694 as a violator and the date of recommitment, and shall direct the  
695 Department of Corrections to compute and apply credit for all  
696 other time served previously on the prior sentence for the  
697 offense for which the offender is being recommitted. This  
698 section does not affect or limit the department's authority to  
699 forfeit gain-time under ss. 944.28(1) and 948.06(8)~~(7)~~.

700           Section 14. For the purpose of incorporating the amendment  
701 to section 901.15, Florida Statutes, in a reference thereto,  
702 subsection (2) of section 570.073, Florida Statutes, is  
703 reenacted to read:

704           570.073 Department of Agriculture and Consumer Services,  
705 law enforcement officers.--

706           (2) Each law enforcement officer shall meet the  
707 qualifications of law enforcement officers under s. 943.13 and  
708 shall be certified as a law enforcement officer by the

757721

Amendment No. (for drafter's use only)

709 Department of Law Enforcement under the provisions of chapter  
710 943. Upon certification, each law enforcement officer is subject  
711 to and shall have the same arrest and other authority provided  
712 for law enforcement officers generally in chapter 901 and shall  
713 have statewide jurisdiction. Each officer shall also have arrest  
714 authority as provided for state law enforcement officers in s.  
715 901.15. Such officers have full law enforcement powers granted  
716 to other peace officers of this state, including the authority  
717 to make arrests, carry firearms, serve court process, and seize  
718 contraband and the proceeds of illegal activities.

719 Section 15. For the purpose of incorporating the amendment  
720 to section 921.187, Florida Statutes, in a reference thereto,  
721 subsection (5) of section 372.921, Florida Statutes, is  
722 reenacted to read:

723 372.921 Exhibition or sale of wildlife.--

724 (5) In instances where wildlife is seized or taken into  
725 custody by the commission, said owner or possessor of such  
726 wildlife shall be responsible for payment of all expenses  
727 relative to the capture, transport, boarding, veterinary care,  
728 or other costs associated with or incurred due to seizure or  
729 custody of wildlife. Such expenses shall be paid by said owner  
730 or possessor upon any conviction or finding of guilt of a  
731 criminal or noncriminal violation, regardless of adjudication or  
732 plea entered, of any provision of chapter 828 or this chapter,  
733 or rule of the commission or if such violation is disposed of  
734 under s. 921.187. Failure to pay such expense may be grounds for  
735 revocation or denial of permits to such individual to possess  
736 wildlife.

757721

Amendment No. (for drafter's use only)

737 Section 16. For the purpose of incorporating the amendment  
738 to section 921.187, Florida Statutes, in a reference thereto,  
739 subsection (4) of section 372.922, Florida Statutes, is  
740 reenacted to read:

741 372.922 Personal possession of wildlife.--

742 (4) In instances where wildlife is seized or taken into  
743 custody by the commission, said owner or possessor of such  
744 wildlife shall be responsible for payment of all expenses  
745 relative to the capture, transport, boarding, veterinary care,  
746 or other costs associated with or incurred due to seizure or  
747 custody of wildlife. Such expenses shall be paid by said owner  
748 or possessor upon any conviction or finding of guilt of a  
749 criminal or noncriminal violation, regardless of adjudication or  
750 plea entered, of any provision of chapter 828 or this chapter,  
751 or rule of the commission or if such violation is disposed of  
752 under s. 921.187. Failure to pay such expense may be grounds for  
753 revocation or denial of permits to such individual to possess  
754 wildlife.

755 Section 17. For the purpose of incorporating the amendment  
756 to section 948.03, Florida Statutes, in a reference thereto,  
757 paragraph (a) of subsection (1) of section 775.089, Florida  
758 Statutes, is reenacted to read:

759 775.089 Restitution.--

760 (1) (a) In addition to any punishment, the court shall  
761 order the defendant to make restitution to the victim for:

762 1. Damage or loss caused directly or indirectly by the  
763 defendant's offense; and

757721

Amendment No. (for drafter's use only)

764           2. Damage or loss related to the defendant's criminal  
765 episode,  
766  
767 unless it finds clear and compelling reasons not to order such  
768 restitution. Restitution may be monetary or nonmonetary  
769 restitution. The court shall make the payment of restitution a  
770 condition of probation in accordance with s. 948.03. An order  
771 requiring the defendant to make restitution to a victim does not  
772 remove or diminish the requirement that the court order payment  
773 to the Crimes Compensation Trust Fund pursuant to chapter 960.  
774 Payment of an award by the Crimes Compensation Trust Fund shall  
775 create an order of restitution to the Crimes Compensation Trust  
776 Fund, unless specifically waived in accordance with subparagraph  
777 (b)1.

778           Section 18. For the purpose of incorporating the amendment  
779 to section 948.03, Florida Statutes, in a reference thereto,  
780 subsection (5) of section 948.001, Florida Statutes, is  
781 reenacted to read:

782           948.001 Definitions.--As used in this chapter, the term:

783           (5) "Probation" means a form of community supervision  
784 requiring specified contacts with parole and probation officers  
785 and other terms and conditions as provided in s. 948.03.

786           Section 19. For the purpose of incorporating the amendment  
787 to section 948.03, Florida Statutes, in a reference thereto,  
788 subsection (4) of section 958.03, Florida Statutes, is reenacted  
789 to read:

790           958.03 Definitions.--As used in this act:

757721

Amendment No. (for drafter's use only)

791 (4) "Probation" means a form of community supervision  
792 requiring specified contacts with parole and probation officers  
793 and other terms and conditions as provided in s. 948.03.

794 Section 20. For the purpose of incorporating the amendment  
795 to section 948.03, Florida Statutes, in references thereto,  
796 subsection (6) of section 947.23, Florida Statutes, is reenacted  
797 to read:

798 947.23 Action of commission upon arrest of parolee.--

799 (6) Within a reasonable time after the hearing, the  
800 commissioner, commissioners, or duly authorized representative  
801 of the commission who conducted the hearing shall make findings  
802 of fact in regard to the alleged parole violation.

803 (a) If the hearing was conducted by three or more  
804 commissioners, a majority of them shall enter an order  
805 determining whether the charges of parole violation have been  
806 sustained, based on the findings of fact made by them. By such  
807 order they shall revoke the parole and return the parolee to  
808 prison to serve the sentence theretofore imposed upon her or  
809 him, reinstate the original order of parole, order the placement  
810 of the parolee into a community control program as set forth in  
811 s. 948.03, or enter such other order as is proper.

812 (b) If the hearing was conducted by one or two  
813 commissioners or a duly authorized representative of the  
814 commission, at least two commissioners shall enter an order  
815 determining whether or not the charges of parole violation have  
816 been sustained, based on the findings of fact made by the  
817 commissioner, commissioners, or duly authorized representative  
818 of the commission. The commissioners, by such order, shall

757721

Amendment No. (for drafter's use only)

819 | revoke the parole and return the parolee to prison to serve the  
820 | sentence theretofore imposed upon her or him, reinstate the  
821 | original order of parole, order the placement of the parolee  
822 | into a community control program as set forth in s. 948.03, or  
823 | enter such other order as is proper.

824 | (c) If the disposition after the revocation hearing is to  
825 | place the parolee into a community control program, the  
826 | commission shall be guided by the procedures and requirements  
827 | provided in chapter 948 which apply to the courts regarding the  
828 | development and implementation of community control.

829 |  
830 | However, any decision to revoke parole shall be based on a  
831 | violation of a term or condition specifically enumerated in the  
832 | parole release order. In a case in which parole is revoked, the  
833 | majority of the commission or the two commissioners shall make a  
834 | written statement of the evidence relied on and the reasons for  
835 | revoking parole.

836 | Section 21. Except as otherwise provided, this act shall  
837 | take effect upon becoming a law.

838 |  
839 |  
840 | ===== T I T L E A M E N D M E N T =====

841 | Remove the entire title and insert:  
842 | A bill to be entitled  
843 | An act relating to probation and community control;  
844 | amending s. 901.15, F.S.; authorizing law enforcement  
845 | officers to make warrantless arrests of certain  
846 | probationers, community controllees, and parolees;

757721

Amendment No. (for drafter's use only)

847 amending s. 921.187, F.S.; limiting the circumstances in  
848 which certain offenders may be placed on community control  
849 or probation; defining the term "disqualifying forcible  
850 felony;" creating s. 903.0473, F.S.; authorizing the court  
851 to order an appearance bond as a condition of an  
852 offender's probation, community control, or other  
853 community supervision; requiring the appearance of the  
854 offender pursuant to the conditions of the bond, subject  
855 to notice; providing for the surrender of the offender in  
856 certain circumstances; providing for estreature and  
857 forfeiture of the bond in circumstances involving the  
858 offender's failure to appear; amending s. 947.22, F.S.;;  
859 authorizing local law enforcement officers to provide  
860 certain assistance to probation officers; amending s.  
861 948.01, F.S.; deleting a 2-year limitation on the duration  
862 of community control or public service; limiting the  
863 circumstances in which certain offenders may be placed on  
864 community control or probation; defining the term  
865 "disqualifying forcible felony;" amending s. 948.03, F.S.;;  
866 deleting a reference to parole supervisors; revising the  
867 standard conditions of probation and community control  
868 that do not require oral pronouncement; requiring  
869 probationers and community controllees to report monthly  
870 to the probation officer; requiring probationers and  
871 community controllees to account for specified  
872 information; authorizing the Department of Corrections to  
873 include electronic monitoring as a condition of the  
874 monthly report; requiring certain probationers and

757721



Amendment No. (for drafter's use only)

875 community controllees to submit to random, monthly  
876 substance abuse testing; prohibiting probationers and  
877 community controllees from using or possessing controlled  
878 substance or drugs without a prescription; providing that  
879 the standard conditions of probation and community control  
880 include a requirement to remain on such supervision  
881 without violating the law and to not have contact with any  
882 victim of the offense unless authorized by the court;  
883 amending s. 948.032, F.S.; providing that it is the  
884 defendant's responsibility to prove inability to pay  
885 court-ordered restitution; amending s. 948.06, F.S.;  
886 authorizing local law enforcement officers to provide  
887 certain assistance to probation officers; providing for  
888 the tolling of the period of probation pursuant to  
889 warrantless arrest; requiring that high-risk felony  
890 probationers or community controllees be held without bail  
891 for alleged violations of nonmonetary conditions of  
892 supervision; requiring the Department of Corrections to  
893 provide the court with a list of available programs and  
894 services when the court indicates it may consider a  
895 downward departure sentence under the Criminal Punishment  
896 Code; specifying contents of reports alleging violations  
897 involving court-ordered obligations; providing for the  
898 court to conduct "danger to the community hearings" in  
899 certain circumstances; specifying circumstances that may  
900 indicate a defendant poses a risk of physical harm to  
901 persons; providing that a finding that defendant poses a  
902 risk of physical harm to persons must be established by a

757721

Amendment No. (for drafter's use only)

903 | preponderance of the evidence; providing that the court  
904 | must provide its reasons on the record for finding that a  
905 | defendant does not pose a risk of physical harm to  
906 | persons; providing a definition for the term, "high-risk  
907 | felony;" providing for representation and participation by  
908 | the state in proceedings under ch. 948, F.S.; providing  
909 | applicability; creating s. 948.062, F.S.; providing for  
910 | the Department of Corrections to review the circumstances  
911 | surrounding specified offenses occurring while certain  
912 | offenders are under supervision of the department;  
913 | amending s. 948.09, F.S.; authorizing the Department of  
914 | Corrections to contract with private entities in certain  
915 | circumstances involving probation and community control;  
916 | amending s. 948.10, F.S.; providing for the department to  
917 | review an offender's eligibility for probation in certain  
918 | circumstances; providing for reports concerning such  
919 | eligibility; amending ss. 958.14 and 921.0017, F.S.;  
920 | revising cross references, to conform; reenacting s.  
921 | 570.073(2), F.S., relating to the arrest powers of law  
922 | enforcement officers employed by the Department of  
923 | Agriculture and Consumer Services, for the purpose of  
924 | incorporating the amendment to s. 901.15, F.S., in a  
925 | reference thereto; reenacting ss. 372.921(5) and  
926 | 372.922(4), F.S., relating to certain dispositions of  
927 | offenses involving the exhibition or sale of wildlife and  
928 | certain dispositions of offenses involving the personal  
929 | possession of wildlife, respectively, for the purpose of  
930 | incorporating the amendment to s. 921.187, F.S., in

757721

Amendment No. (for drafter's use only)

931 | references thereto; reenacting s. 921.187(1)(a), F.S.,  
932 | relating to sentencing alternatives, for the purpose of  
933 | incorporating the amendment to s. 948.01, F.S., in a  
934 | reference thereto; reenacting ss. 775.089(1)(a),  
935 | 948.001(5), 958.03(4), and 947.23(6), F.S., relating to  
936 | restitution, the definition of the term "probation" for  
937 | purposes of ch. 948, F.S., the definition of the term  
938 | "probation" for purposes of the Florida Youthful Offender  
939 | Act, and actions upon arrest of parolees, respectively,  
940 | for the purpose of incorporating the amendment to s.  
941 | 948.03, F.S., in references thereto; reenacting s.  
942 | 948.01(9), (11)(b), and (13)(b), F.S., relating to  
943 | procedures governing violations, revocations,  
944 | modifications, and continuations of community control, for  
945 | the purpose of incorporating the amendment to s. 948.06,  
946 | F.S., in references thereto; providing effective dates.  
947 |

757721