

By Senators Villalobos, Haridopolos, Crist, Argenziano, Fasano
and Smith

38-1952A-04

1 A bill to be entitled
2 An act relating to probation and community
3 control; amending s. 921.0024, F.S., relating
4 to the worksheet computation of the Criminal
5 Punishment Code; increasing the number of
6 sentence points assessed for a community
7 sanction violation; amending s. 944.473, F.S.;
8 providing additional criteria for mandated
9 participation in a substance abuse program;
10 requiring that substance abuse treatment be
11 considered a basic support service in the
12 release orientation program for certain
13 offenders; creating s. 944.6091, F.S.;
14 requiring the Department of Corrections and the
15 Department of Law Enforcement to develop an
16 interagency notification agreement for
17 identifying felony arrests of former inmates
18 who are not under postrelease supervision;
19 providing legislative intent with respect to
20 the notification method; amending s. 944.705,
21 F.S.; requiring that substance abuse treatment
22 be included as part of the release orientation
23 program for certain inmates; amending s.
24 948.03, F.S., relating to terms and conditions
25 of probation or community control; providing
26 additional requirements for offenders have been
27 incarcerated for controlled substance
28 violations; providing additional requirements
29 for random substance abuse testing; amending s.
30 948.06, F.S.; requiring that the court revoke
31 an offender's probation or community control if

1 an offender violates probation or community
2 control by committing an offense; creating s.
3 948.061, F.S.; requiring the Department of
4 Corrections to develop a risk assessment and
5 alert system to monitor certain offenders
6 placed on probation or community control;
7 requiring increased supervision of such
8 offenders under certain circumstances;
9 requiring that information be provided to the
10 court by the correctional probation officer;
11 creating s. 948.062, F.S.; requiring the
12 inspector general of the Department of
13 Corrections to review the circumstances of
14 certain arrests of offenders on probation or
15 community control; requiring the Office of
16 Program Policy Analysis and Government
17 Accountability to analyze the reviews and
18 report to the President of the Senate and the
19 Speaker of the House of Representatives;
20 providing legislative findings with respect to
21 the necessity for increased supervision of
22 high-risk offenders who violate community
23 supervision; requesting that the Supreme Court
24 amend a Rule of Criminal Procedure to require
25 that certain offenders arrested for a violation
26 of probation or community control be detained
27 while awaiting a hearing on the violation;
28 providing for amendment of the rules to conform
29 to other provisions of the act; providing
30 effective dates.

31

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

2

3 Section 1. Paragraph (b) of subsection (1) of section
4 921.0024, Florida Statutes, is amended to read:

5 921.0024 Criminal Punishment Code; worksheet
6 computations; scoresheets.--

7 (1)

8

9 (b) WORKSHEET KEY:

10

11 Legal status points are assessed when any form of legal status
12 existed at the time the offender committed an offense before
13 the court for sentencing. Four (4) sentence points are
14 assessed for an offender's legal status.

15

16 Community sanction violation points are assessed when a
17 community sanction violation is before the court for
18 sentencing. Twelve (12)~~Six (6)~~ sentence points are assessed
19 for each community sanction violation, and each successive
20 community sanction violation; however, if the community
21 sanction violation includes a new felony conviction before the
22 sentencing court, twenty-four (24)~~twelve (12)~~ community
23 sanction violation points are assessed for such violation, and
24 for each successive community sanction violation involving a
25 new felony conviction. Multiple counts of community sanction
26 violations before the sentencing court shall not be a basis
27 for multiplying the assessment of community sanction violation
28 points.

29

30 Prior serious felony points: If the offender has a primary
31 offense or any additional offense ranked in level 8, level 9,

1 or level 10, and one or more prior serious felonies, a single
2 assessment of 30 points shall be added. For purposes of this
3 section, a prior serious felony is an offense in the
4 offender's prior record that is ranked in level 8, level 9, or
5 level 10 under s. 921.0022 or s. 921.0023 and for which the
6 offender is serving a sentence of confinement, supervision, or
7 other sanction or for which the offender's date of release
8 from confinement, supervision, or other sanction, whichever is
9 later, is within 3 years before the date the primary offense
10 or any additional offense was committed.

11

12 Prior capital felony points: If the offender has one or more
13 prior capital felonies in the offender's criminal record,
14 points shall be added to the subtotal sentence points of the
15 offender equal to twice the number of points the offender
16 receives for the primary offense and any additional offense. A
17 prior capital felony in the offender's criminal record is a
18 previous capital felony offense for which the offender has
19 entered a plea of nolo contendere or guilty or has been found
20 guilty; or a felony in another jurisdiction which is a capital
21 felony in that jurisdiction, or would be a capital felony if
22 the offense were committed in this state.

23

24 Possession of a firearm, semiautomatic firearm, or machine
25 gun: If the offender is convicted of committing or attempting
26 to commit any felony other than those enumerated in s.
27 775.087(2) while having in his or her possession: a firearm as
28 defined in s. 790.001(6), an additional 18 sentence points are
29 assessed; or if the offender is convicted of committing or
30 attempting to commit any felony other than those enumerated in
31 s. 775.087(3) while having in his or her possession a

1 semiautomatic firearm as defined in s. 775.087(3) or a machine
2 gun as defined in s. 790.001(9), an additional 25 sentence
3 points are assessed.

4

5 Sentencing multipliers:

6

7 Drug trafficking: If the primary offense is drug trafficking
8 under s. 893.135, the subtotal sentence points are multiplied,
9 at the discretion of the court, for a level 7 or level 8
10 offense, by 1.5. The state attorney may move the sentencing
11 court to reduce or suspend the sentence of a person convicted
12 of a level 7 or level 8 offense, if the offender provides
13 substantial assistance as described in s. 893.135(4).

14

15 Law enforcement protection: If the primary offense is a
16 violation of the Law Enforcement Protection Act under s.
17 775.0823(2), the subtotal sentence points are multiplied by
18 2.5. If the primary offense is a violation of s. 775.0823(3),
19 (4), (5), (6), (7), or (8), the subtotal sentence points are
20 multiplied by 2.0. If the primary offense is a violation of s.
21 784.07(3) or s. 775.0875(1), or of the Law Enforcement
22 Protection Act under s. 775.0823(9) or (10), the subtotal
23 sentence points are multiplied by 1.5.

24

25 Grand theft of a motor vehicle: If the primary offense is
26 grand theft of the third degree involving a motor vehicle and
27 in the offender's prior record, there are three or more grand
28 thefts of the third degree involving a motor vehicle, the
29 subtotal sentence points are multiplied by 1.5.

30

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1 Offense related to a criminal street gang: If the offender is
2 convicted of the primary offense and committed that offense
3 for the purpose of benefiting, promoting, or furthering the
4 interests of a criminal street gang as prohibited under s.
5 874.04, the subtotal sentence points are multiplied by 1.5.

6
7 Domestic violence in the presence of a child: If the offender
8 is convicted of the primary offense and the primary offense is
9 a crime of domestic violence, as defined in s. 741.28, which
10 was committed in the presence of a child under 16 years of age
11 who is a family household member as defined in s. 741.28(2)
12 with the victim or perpetrator, the subtotal sentence points
13 are multiplied by 1.5.

14 Section 2. Subsection (2) of section 944.473, Florida
15 Statutes, is amended to read:

16 944.473 Inmate substance abuse testing program.--

17 (2) SUBSTANCE ABUSE TREATMENT PROGRAMS.--

18 (a) An inmate who meets the criteria established by
19 the department shall participate in substance abuse program
20 services when such services are available. A right to
21 substance abuse program services is not stated, intended, or
22 otherwise implied by this chapter.

23 (b) Upon arrival at a department's reception center
24 for initial processing, each inmate shall be screened and
25 assessed to determine if the inmate meets the department's
26 criteria for mandated participation in a substance-abuse
27 program. Criteria for mandated substance abuse program
28 services shall be based on:

29 1. The presence of a diagnosed psychoactive substance
30 dependence or use disorder;

31 2. The severity of the addiction;

1 3. A history of criminal behavior related to substance
2 abuse;

3 4. A recommendation by a sentencing authority for
4 substance abuse program services;

5 5. Unsuccessful participation in community-based
6 substance abuse services;

7 6. Sentencing by a drug court or drug division; ~~and~~

8 7. Previous substantive or technical violations
9 related to substance abuse while on community supervision; and

10 8.7. Other classification or program criteria that the
11 department finds will ensure security and optimal program
12 placement.

13 (c) An inmate who has been identified as needing
14 substance abuse treatment pursuant to this section and who has
15 not been provided an opportunity to receive such treatment
16 while incarcerated shall be automatically identified by the
17 department as needing substance abuse treatment as a basic
18 support service in the release orientation program pursuant to
19 s. 944.705.

20 (d)(c) When selecting contract providers to administer
21 substance abuse treatment programs, the department shall make
22 every effort to consider qualified faith-based service groups
23 on an equal basis with other private organizations.

24 Section 3. Section 944.6091, Florida Statutes, is
25 created to read:

26 944.6091 Interagency notification agreement;
27 distribution of records to prosecuting authority when a former
28 inmate is arrested.--

29 (1) By December 1, 2004, the Department of Corrections
30 and the Department of Law Enforcement shall develop an
31 interagency notification agreement to create an electronic

1 method for quickly identifying, through the Florida Crime
2 Information Center or any other electronic means, any new
3 felony arrest of a former inmate released from incarceration
4 within the Department of Correction when:

5 (a) The new felony arrest occurs within 6 months after
6 the former inmate's expiration of sentence; and

7 (b) The former inmate's sentence has expired and the
8 former inmate has reentered the community without postrelease
9 supervision.

10
11 The interagency agreement shall be developed after
12 consultation with prosecutors to identify the most useful
13 records needed, the most effective method of dissemination,
14 and the most useful timeframe for the prosecuting authority to
15 receive the records.

16 (2) It is the intent of the Legislature that this
17 notification method be used to alert and prompt the Department
18 of Corrections to timely disseminate to the appropriate
19 prosecutor previously compiled corrections records and other
20 pertinent information maintained by the Department of
21 Corrections concerning a reoffending former inmate. It is the
22 intent of the Legislature that this additional information be
23 used to assist prosecutors in appropriately responding to new
24 felonies committed by former inmates recently released from
25 the state prison system.

26 Section 4. Section 944.705, Florida Statutes, is
27 amended to read:

28 944.705 Release orientation program.--

29 (1) The department shall provide participation in a
30 standardized release orientation program to every eligible
31 inmate.

1 (2) The release orientation program instruction must
2 include, but is not limited to:

- 3 (a) Employment skills.
- 4 (b) Money management skills.
- 5 (c) Personal development and planning.
- 6 (d) Special needs.
- 7 (e) Community reentry concerns.
- 8 (f) Community reentry support.
- 9 (g) Any other appropriate instruction to ensure the

10 inmate's successful reentry into the community.

11 (3) Any inmate who claims to be a victim of domestic
12 violence as defined in s. 741.28 shall receive, as part of the
13 release orientation program, referral to the nearest domestic
14 violence center certified under chapter 39.

15 (4) Any inmate who demonstrates a history of substance
16 abuse or addiction shall receive as part of the release
17 orientation program referral to the nearest community
18 substance abuse program.

19 ~~(5)(4)~~ The department shall conduct a needs assessment
20 of every inmate to determine which, if any, basic support
21 services the inmate needs after release. Substance abuse
22 treatment shall be deemed a basic support service for any
23 inmate who has been identified as needing substance abuse
24 treatment pursuant to s. 944.473 and who has not been provided
25 an opportunity to receive such treatment while incarcerated.

26 ~~(6)(5)~~ The department may contract with public or
27 private entities, including faith-based service groups, for
28 the provision of all or part of the services pursuant to this
29 section.

30 ~~(7)(6)~~(a) The department shall notify every inmate, in
31 no less than 18-point type in the inmate's release documents,

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 5. Subsection (1) of section 948.03, Florida
14 Statutes, as amended by section 136 of chapter 2003-402, Laws
15 of Florida, is amended to read:

16 948.03 Terms and conditions of probation or community
17 control.--

18 (1) The court shall determine the terms and conditions
19 of probation or community control. Conditions specified in
20 paragraphs (a)-(n) ~~(a)-(m)~~ do not require oral pronouncement
21 at the time of sentencing and may be considered standard
22 conditions of probation. Conditions specified in paragraphs
23 (a)-(n) ~~(a)-(m)~~ and (2)(a) do not require oral pronouncement
24 at sentencing and may be considered standard conditions of
25 community control. These conditions may include among them
26 the following, that the probationer or offender in community
27 control shall:

28 (a) Report to the probation and parole supervisors as
29 directed.

30 (b) Permit such supervisors to visit him or her at his
31 or her home or elsewhere.

1 (c) Work faithfully at suitable employment insofar as
2 may be possible.

3 (d) Remain within a specified place.

4 (e) Make reparation or restitution to the aggrieved
5 party for the damage or loss caused by his or her offense in
6 an amount to be determined by the court. The court shall make
7 such reparation or restitution a condition of probation,
8 unless it determines that clear and compelling reasons exist
9 to the contrary. If the court does not order restitution, or
10 orders restitution of only a portion of the damages, as
11 provided in s. 775.089, it shall state on the record in detail
12 the reasons therefor.

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

25 (g) Support his or her legal dependents to the best of
26 his or her ability.

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

30 (i) Pay any application fee assessed under s.
31 27.52(2)(a) and attorney's fees and costs assessed under s.

1 938.29, subject to modification based on change of
2 circumstances.

3 (j) Not associate with persons engaged in criminal
4 activities.

5 (k)1. Submit to random testing as directed by the
6 correctional probation officer or the professional staff of
7 the treatment center where he or she is receiving treatment to
8 determine the presence or use of alcohol or controlled
9 substances.

10 2. If the offense was a controlled substance violation
11 and the period of probation immediately follows a period of
12 incarceration in the state correction system or if the offense
13 was a controlled substance violation and the offender had a
14 previous term of imprisonment for a
15 controlled-substance-related offense, the conditions shall
16 include a requirement that the offender submit, no less than
17 once every 45 days, to random substance abuse testing
18 ~~intermittently~~ throughout the term of supervision, upon the
19 direction of the correctional probation officer as defined in
20 s. 943.10(3).

21 (l) Be prohibited from possessing, carrying, or owning
22 any firearm unless authorized by the court and consented to by
23 the probation officer.

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

30 (n) Remain at liberty without violating the law.

31

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

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

10 Section 6. Effective July 1, 2004, and applicable to
11 offenses committed on or after that date, section 948.06,
12 Florida Statutes, is amended to read:

13 948.06 Violation of probation or community control;
14 revocation; modification; continuance; failure to pay
15 restitution or cost of supervision.--

16 (1)(a) Whenever within the period of probation or
17 community control there are reasonable grounds to believe that
18 a probationer or offender in community control has violated
19 his or her probation or community control in a material
20 respect, any law enforcement officer who is aware of the
21 probationary or community control status of the probationer or
22 offender in community control or any parole or probation
23 supervisor may arrest or request any county or municipal law
24 enforcement officer to arrest such probationer or offender
25 without warrant wherever found and forthwith return him or her
26 to the court granting such probation or community control.

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

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

4 (d) Upon the filing of an affidavit alleging a
5 violation of probation or community control and following
6 issuance of a warrant under s. 901.02, the probationary period
7 is tolled until the court enters a ruling on the violation.
8 Notwithstanding the tolling of probation as provided in this
9 subsection, the court shall retain jurisdiction over the
10 offender for any violation of the conditions of probation or
11 community control that is alleged to have occurred during the
12 tolling period. The probation officer is permitted to continue
13 to supervise any offender who remains available to the officer
14 for supervision until the supervision expires pursuant to the
15 order of probation or community control or until the court
16 revokes or terminates the probation or community control,
17 whichever comes first.

18 (2)(a) The court, upon the probationer or offender
19 being brought before it, shall advise him or her of such
20 charge of violation and, if such charge is admitted to be
21 true, may forthwith revoke, modify, or continue the probation
22 or community control or place the probationer into a community
23 control program.

24 (b) If probation or community control is revoked, the
25 court shall adjudge the probationer or offender guilty of the
26 offense charged and proven or admitted, unless he or she has
27 previously been adjudged guilty, and impose any sentence which
28 it might have originally imposed before placing the
29 probationer on probation or the offender into community
30 control, except as provided in subsection (4).

31

1 (c) If such violation of probation or community
2 control is not admitted by the probationer or offender, the
3 court may commit him or her or release him or her with or
4 without bail to await further hearing, or it may dismiss the
5 charge of probation or community control violation.

6 (d) If such charge is not at that time admitted by the
7 probationer or offender and if it is not dismissed, the court,
8 as soon as may be practicable, shall give the probationer or
9 offender an opportunity to be fully heard on his or her behalf
10 in person or by counsel.

11 (e) After such hearing, the court may revoke, modify,
12 or continue the probation or community control or place the
13 probationer into community control. If such probation or
14 community control is revoked, the court shall adjudge the
15 probationer or offender guilty of the offense charged and
16 proven or admitted, unless he or she has previously been
17 adjudged guilty, and impose any sentence which it might have
18 originally imposed before placing the probationer or offender
19 on probation or into community control, except as provided in
20 subsection (4).

21 (f) Notwithstanding s. 775.082, when a period of
22 probation or community control has been tolled, upon
23 revocation or modification of the probation or community
24 control, the court may impose a sanction with a term that when
25 combined with the amount of supervision served and tolled,
26 exceeds the term permissible pursuant to s. 775.082 for a term
27 up to the amount of the tolled period supervision.

28 (g) If the court dismisses an affidavit alleging a
29 violation of probation or community control, the offender's
30 probation or community control shall continue as previously
31 imposed, and the offender shall receive credit for all tolled

1 time against his or her term of probation or community
2 control.

3 (3)~~(2)~~(a) When any state or local law enforcement
4 agency investigates or arrests a person for committing, or
5 attempting, soliciting, or conspiring to commit, a violation
6 of s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 827.071,
7 s. 847.0133, s. 847.0135, or s. 847.0145, the law enforcement
8 agency shall contact the Department of Corrections to verify
9 whether the person under investigation or under arrest is on
10 probation, community control, parole, conditional release, or
11 control release.

12 (b) If the law enforcement agency finds that the
13 person under investigation or under arrest is on probation,
14 community control, parole, conditional release, or control
15 release, the law enforcement agency shall immediately notify
16 the person's probation officer or release supervisor of the
17 investigation or the arrest.

18 (4) For any probationer or person on community control
19 who:

20 (a) Is placed on probation or community control for an
21 offense committed on or after July 1, 2004;

22 (b) Is found in violation of the probation or
23 community control as a result of the commission of a new
24 criminal offense; and

25 (c) Has been previously convicted of or had
26 adjudication withheld for a forcible felony defined in s.
27 776.08 or is currently on probation or community control for
28 committing a forcible felony,

29
30 the court shall revoke his or her probation or community
31 control, adjudicate the probationer or offender guilty of the

1 offense forming the basis of the probation or community
2 control unless he or she has previously been adjudicated
3 guilty, and impose a term of imprisonment of at least 5 years.
4 However, if such term of imprisonment would result in a
5 sentence that exceeds the statutory maximum sentence, the
6 court shall impose the maximum term of imprisonment that would
7 not exceed the statutory maximum sentence. A term of
8 imprisonment of at least 5 years may be followed by a term of
9 probation or community control for the remainder of the
10 statutory maximum sentence. Any term of imprisonment imposed
11 pursuant to this subsection shall be in addition to any time
12 previously served in prison or county jail, or both, for the
13 offense for which the probation or community control was
14 provided and subsequently revoked.

15 (5)~~(3)~~ When the court imposes a subsequent term of
16 supervision following a revocation of probation or community
17 control, it shall not provide credit for time served while on
18 probation or community control toward any subsequent term of
19 probation or community control. However, the court may not
20 impose a subsequent term of probation or community control
21 which, when combined with any amount of time served on
22 preceding terms of probation or community control for offenses
23 before the court for sentencing, would exceed the maximum
24 penalty allowable as provided by s. 775.082. No part of the
25 time that the defendant is on probation or in community
26 control shall be considered as any part of the time that he or
27 she shall be sentenced to serve.

28 (6)~~(4)~~ Notwithstanding any other provision of this
29 section, a probationer or an offender in community control who
30 is arrested for violating his or her probation or community
31 control in a material respect may be taken before the court in

1 the county or circuit in which the probationer or offender was
2 arrested. That court shall advise him or her of such charge of
3 a violation and, if such charge is admitted, shall cause him
4 or her to be brought before the court which granted the
5 probation or community control.

6 (a) If such violation is not admitted by the
7 probationer or offender, the court may commit him or her or
8 release him or her with or without bail to await further
9 hearing. The court, as soon as is practicable, shall give the
10 probationer or offender an opportunity to be fully heard on
11 his or her behalf in person or by counsel.

12 (b) After such hearing, the court shall make findings
13 of fact and forward the findings to the court which granted
14 the probation or community control and to the probationer or
15 offender or his or her attorney. The findings of fact by the
16 hearing court are binding on the court which granted the
17 probation or community control. Upon the probationer or
18 offender being brought before it, the court which granted the
19 probation or community control may revoke, modify, or continue
20 the probation or community control or may place the
21 probationer into community control as provided in this
22 section.

23 (7)(5) Whenever the department submits a violation
24 report to the court for failure to pay court-ordered
25 obligations, the department shall include a statement by the
26 probationer or offender on community control concerning his or
27 her ability to pay.In any hearing in which the failure of a
28 probationer or offender in community control to pay
29 restitution or the cost of supervision as provided in s.
30 948.09, as directed, is established by the state, if the
31 probationer or offender asserts his or her inability to pay

1 restitution or the cost of supervision, it is incumbent upon
2 the probationer or offender to prove by clear and convincing
3 evidence that he or she does not have the present resources
4 available to pay restitution or the cost of supervision
5 despite sufficient bona fide efforts legally to acquire the
6 resources to do so. If the probationer or offender cannot pay
7 restitution or the cost of supervision despite sufficient bona
8 fide efforts, the court shall consider alternate measures of
9 punishment other than imprisonment. Only if alternate measures
10 are not adequate to meet the state's interests in punishment
11 and deterrence may the court imprison a probationer or
12 offender in community control who has demonstrated sufficient
13 bona fide efforts to pay restitution or the cost of
14 supervision.

15 (8)~~(6)~~ Any parolee in a community control program who
16 has allegedly violated the terms and conditions of such
17 placement is subject to the provisions of ss. 947.22 and
18 947.23.

19 (9)~~(7)~~ Any provision of law to the contrary
20 notwithstanding, whenever probation, community control, or
21 control release, including the probationary, community control
22 portion of a split sentence, is violated and the probation or
23 community control is revoked, the offender, by reason of his
24 or her misconduct, shall be deemed to have forfeited all
25 gain-time or commutation of time for good conduct, as provided
26 by law, earned up to the date of his or her release on
27 probation, community control, or control release. This
28 subsection does not deprive the prisoner of his or her right
29 to gain-time or commutation of time for good conduct, as
30 provided by law, from the date on which the prisoner is
31 returned to prison. However, if a prisoner is sentenced to

1 incarceration following termination from a drug punishment
2 program imposed as a condition of probation, the sentence may
3 include incarceration without the possibility of gain-time or
4 early release for the period of time remaining in his or her
5 treatment program placement term.

6 Section 7. Section 948.061, Florida Statutes, is
7 created to read:

8 948.061 Identifying, assessing, and monitoring certain
9 high-risk offenders on community supervision; providing
10 cumulative criminal and supervision histories to the court.--

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

15 (a) Previously been placed on probation or community
16 control and who have a history of committing multiple
17 community supervision violations in this state or in other
18 jurisdictions or who have previously been incarcerated in this
19 state or in other jurisdictions; and

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

23 1. Attempted suicide or severe depression;

24 2. Marital instability or history of domestic
25 violence;

26 3. History of substance abuse;

27 4. Unemployment or substantial financial difficulties;

28 5. History of violence, particularly involving
29 strangers; or

30 6. Any other risk factor identified by the department.
31

1 (2) Recognizing that there may be a propensity for
2 these offenders with extensive criminal histories and multiple
3 risk factors to pose a serious threat to the community, the
4 department shall consider the cumulative impact of these risk
5 factors and, if necessary, place these offenders on an
6 elevated alert status and provide the highest level of
7 supervision available for these offenders until the situation
8 stabilizes and the department no longer believes that the
9 offender poses a threat to others. In providing such
10 supervision and surveillance, the department shall increase
11 the number of office and home visits conducted by the
12 correctional probation officer; expand the number of and type
13 of employment, family, community, and neighborhood contacts by
14 the correctional probation officer; increase referrals to
15 available community mental health facilities and community
16 assistance programs; develop emergency communication plans and
17 alert systems for law enforcement agencies and the court in
18 order to quickly detain the offender in response to a
19 violation; and prioritize its resources in order to more
20 closely monitor the offender's activities in an effort to
21 prevent escalating criminal behavior.

22 (3) In providing criminal history and background
23 information to the court on these complex and high-risk cases,
24 the correctional probation officer shall provide to the court
25 in each report submitted to the court and at every hearing
26 before the court a clear, complete, and concise cumulative and
27 integrated chronology of the offender's criminal history and
28 prior terms of community supervision, including all
29 substantive or technical violations of community supervision.

30 Section 8. Section 948.062, Florida Statutes, is
31 created to read:

1 948.062 Reviewing and reporting serious offenses
2 committed by offenders placed on community supervision.--

3 (1) The department's inspector general as designated
4 pursuant to s. 944.31 shall review the circumstances related
5 to offenders placed on community supervision who have been
6 arrested while on supervision for the following serious
7 offenses:

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

9 (b) Any sexual battery as provided in s. 794.011 or s.
10 794.023;

11 (c) Any sexual performance by a child as provided in
12 s. 827.071;

13 (d) Any kidnapping, false imprisonment, or luring of a
14 child as provided in s. 787.01, s. 782.07, or s. 787.025;

15 (e) Any lewd and lascivious battery or lewd and
16 lascivious molestation as provided in s. 800.04(4) or s.
17 800.04(5);

18 (f) Any aggravated child abuse as provided in s.
19 827.03(2);

20 (g) Any robbery with a firearm or other deadly weapon,
21 home invasion robbery, or carjacking as provided in s.
22 812.13(2)(a), s. 812.135, or s. 812.133;

23 (h) Any aggravated stalking as provided in s.
24 784.048(3), (4), or (5);

25 (i) Any forcible felony as provided in s. 776.08
26 committed by any person under community supervision designated
27 as a sexual predator; or

28 (j) Any DUI manslaughter as provided in s.
29 316.193(3)(c), or vehicular or vessel homicide as provided in
30 s. 782.071 or s. 787.072, committed by any person under

31

1 community supervision for an offense involving death or injury
2 resulting from a driving incident.

3
4 The inspector general's review shall document whether the
5 supervision of the offender met enumerated rules, policies,
6 and procedures and whether supervision practices were
7 followed. This review shall be completed no later than 10
8 business days after the date of the arrest.

9 (2) On an annual basis, the inspector general shall
10 provide these reviews to the Office of Program Policy Analysis
11 and Government Accountability. The Office of Program Policy
12 Analysis and Government Accountability shall annually analyze
13 these reviews and provide a written report to the President of
14 the Senate and the Speaker of the House of Representatives.
15 The report must include, at a minimum, any identified systemic
16 deficiencies in managing high-risk offenders on community
17 supervision and the judicial disposition of such offenders;
18 any patterns of noncompliance by correctional probation
19 officers and any inconsistent or inefficient judicial case
20 processing for offenders who have violated community
21 supervision; and recommendations for improving the community
22 supervision program.

23 Section 9. (1) The 2004 Legislature closely examined
24 chapter 948, Florida Statutes, to address certain critical
25 public safety concerns and substantive policy issues involving
26 offenders who violate probation or community control. The
27 Legislature has carefully scrutinized the effectiveness of the
28 state's community supervision system and concluded that the
29 system should increase the level of supervision of high-risk
30 offenders who violate community supervision. The Legislature
31 finds there may be a propensity for such offenders with

1 extensive criminal histories and multiple risk factors to pose
2 a serious threat to the community. In addition, the
3 Legislature finds that the system should consider the
4 cumulative impact of such histories and factors and quickly
5 detain offenders alleged to be in violation of community
6 supervision in order to protect the public and prevent
7 escalating criminal behavior.

8 (2)(a) Therefore, the Legislature strongly urges the
9 Florida Supreme Court to amend the concomitant Rule of
10 Criminal Procedure which sets forth the procedures the lower
11 courts must follow when considering bail in cases of
12 violations of probation and community control.

13 (b) As the Supreme Court opined in Bernhardt v. State,
14 288 So. 490 (Fla. 1974), release on bail pending revocation of
15 probation is not a constitutional right. However, the
16 Legislature recognizes that it is the prerogative of the
17 Supreme Court to act in the area of practice and procedure.
18 The Legislature, therefore, recommends that the Supreme Court
19 consider making the following revision to Rule 3.790 regarding
20 bail in certain cases involving a violation of community
21 supervision.

22 (c) In particular, the Supreme Court is requested to
23 amend its rule to require that a probationer or community
24 controllee who is arrested on an alleged violation, regardless
25 of adjudication in the underlying offense, be detained while
26 awaiting a hearing before the court that granted the probation
27 or community control, if the offense for which the probationer
28 or community controllee is currently on probation or community
29 control is a forcible felony or if the probationer or
30 community controllee has previously been convicted of a
31

1 forcible felony as provided in section 776.08, Florida
2 Statutes.

3 Section 10. The Florida Rules of Criminal Procedure
4 shall be amended to reflect the newly created sentencing
5 mandate for offenders who violate probation or community
6 control, as provided in section 6 of this act, and to
7 incorporate any other conforming amendments as deemed
8 necessary by the Supreme Court.

9 Section 11. Except as otherwise expressly provided in
10 this act, this act shall take effect upon becoming a law.

11
12 *****

13 SENATE SUMMARY

14 Revises various laws governing the supervision of
15 offenders on probation or community control. Increases
16 the number of sentence points assessed for a community
17 sanction violation. Requires that substance abuse
18 treatment be considered a basic support service in the
19 release orientation program for certain offenders.
20 Requires the Department of Corrections and the Department
21 of Law Enforcement to develop an interagency notification
22 agreement to identify felony arrest of former inmates who
23 are not under supervision. Revises the requirements for
24 random substance abuse testing. Requires that the court
25 revoke an offender's probation or community control if an
26 offender violates probation or community control by
27 committing an offense. Requires the Department of
28 Corrections to monitor certain offenders placed on
29 probation or community control. Requires the inspector
30 general of the Department of Corrections to review the
31 circumstances of certain arrests of offenders on
probation or community control. Provides for a report to
the Legislature. (See bill for details.)