

By the Committee on Criminal Justice

307-2126-04

1 A bill to be entitled
2 An act relating to probation and community
3 control; amending s. 948.001, F.S.; deleting
4 provisions authorizing the Department of
5 Corrections to collect certain fees as a part
6 of administrative probation; amending s.
7 948.01, F.S.; correcting a cross-reference;
8 transferring and renumbering provisions
9 governing probation and community control as s.
10 948.10(10), F.S.; transferring and renumbering
11 provisions authorizing a split sentence of
12 probation or community control and imprisonment
13 as s. 948.012(1), F.S.; prohibiting a private
14 entity from providing probation or supervision
15 services to certain offenders; transferring and
16 renumbering provisions relating to violations
17 of community control as s. 948.10(9), F.S.;
18 transferring and renumbering provisions
19 restricting the placement of certain offenders
20 into community control as s. 948.10(2), F.S.;
21 transferring and renumbering provisions
22 authorizing split sentencing as s. 948.012(2)
23 and (3), F.S.; transferring and renumbering
24 provisions relating to drug offender probation
25 as s. 948.20, F.S.; transferring and
26 renumbering provisions governing community
27 control and criminal quarantine community
28 control as s. 948.101(3), F.S.; transferring
29 and renumbering provisions relating to
30 administration probation as s. 948.013, F.S.;
31 amending s. 948.011, F.S.; clarifying

1 circumstances under which the court may impose
2 a fine or place an offender on probation or
3 community control; amending s. 948.03, F.S.;
4 conforming cross-references; providing for
5 submission of blood or other biological
6 specimens as a standard condition of probation;
7 transferring and renumbering provisions
8 relating to intensive supervision and
9 surveillance as s. 948.101, F.S.; authorizing
10 the court to impose additional terms or
11 conditions of community control; providing
12 certain limitations; transferring and
13 renumbering provisions governing electronic
14 monitoring as s. 948.11(2), F.S.; amending s.
15 948.11, F.S.; transferring and renumbering
16 provisions governing the diagnosis, evaluation,
17 and treatment of certain sex offenders as s.
18 948.31, F.S.; transferring and renumbering
19 provisions governing additional terms and
20 conditions of probation or community control
21 for certain sex offenses as s. 948.30, F.S.;
22 clarifying a requirement for submitting blood
23 and other specimens; transferring and
24 renumbering provisions relating to residential
25 treatment as s. 948.035, F.S.; transferring and
26 renumbering provisions relating to work
27 programs as s. 948.036, F.S.; transferring and
28 renumbering provisions relating to education
29 and learning as a condition of probation or
30 community control as s. 948.037, F.S.;
31 transferring and renumbering provisions

1 relating to the submission of blood or other
2 biological specimens as s. 948.014, F.S.;
3 transferring and renumbering provisions
4 relating to a batterers' intervention program
5 as s. 948.038, F.S.; creating s. 948.039, F.S.;
6 authorizing the court to impose special terms
7 and conditions of probation or community
8 control, including requiring the offender to
9 attend an HIV/AIDS awareness program and pay
10 certain costs; amending s. 948.06, F.S.,
11 relating to procedures following an arrest of
12 an offender for a violation of probation or
13 community control; transferring and renumbering
14 provisions relating to the arrest of a person
15 for certain sex offenses as s. 948.32, F.S.;
16 amending s. 948.09, F.S.; requiring an offender
17 under addiction-recovery supervision to pay the
18 cost of supervision; amending s. 948.10, F.S.;
19 correcting a cross-reference; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Subsection (1) of section 948.001, Florida
25 Statutes, is amended to read:

26 948.001 Definitions.--As used in this chapter, the
27 term:

28 (1) "Administrative probation" means a form of
29 noncontact supervision in which an offender who presents a low
30 risk of harm to the community may, upon satisfactory
31 completion of half the term of probation, be transferred

1 ~~placed~~ by the Department of Corrections to ~~on~~ nonreporting
2 status until expiration of the term of supervision. ~~The~~
3 ~~department is authorized to collect an initial processing fee~~
4 ~~of up to \$50 for each probationer reduced to administrative~~
5 ~~probation. Such offender is exempt from further payment for~~
6 ~~cost of supervision as required in s. 948.09.~~

7 Section 2. Paragraph (c) of subsection (3) of section
8 948.01, Florida Statutes, is amended to read:

9 948.01 When court may place defendant on probation or
10 into community control.--

11 (3) If, after considering the provisions of subsection
12 (2) and the offender's prior record or the seriousness of the
13 offense, it appears to the court in the case of a felony
14 disposition that probation is an unsuitable dispositional
15 alternative to imprisonment, the court may place the offender
16 in a community control program as provided in s. 948.10. Or,
17 in a case of prior disposition of a felony commitment, upon
18 motion of the offender or the department or upon its own
19 motion, the court may, within the period of its retained
20 jurisdiction following commitment, suspend the further
21 execution of the disposition and place the offender in a
22 community control program upon such terms as the court may
23 require. The court may consult with a local offender advisory
24 council pursuant to s. 948.90 with respect to the placement of
25 an offender into community control. Not later than 3 working
26 days before the hearing on the motion, the department shall
27 forward to the court all relevant material on the offender's
28 progress while in custody. If this sentencing alternative to
29 incarceration is utilized, the court shall:

30 (c) Require the department to provide notifications
31 pursuant to s.948.10(8)~~s. 948.10(6)~~.

1 Section 3. Present subsection (8) of section 948.10,
2 Florida Statutes, is redesignated as subsection (11) of
3 section 948.10, Florida Statutes, and present subsection (5)
4 of section 948.01, Florida Statutes, is transferred and
5 renumbered as subsection (10) of section 948.10, Florida
6 Statutes, to read:

7 948.10 Community control programs.--

8 (10)~~(5)~~ Upon completion of the sanctions imposed in
9 the community control plan before the expiration of the term
10 ordered by the court, the department may petition the court to
11 discharge the offender from community control supervision or
12 to return the offender to a program of regular probation
13 supervision. In considering the petition, the court should
14 recognize the limited staff resources committed to the
15 community control program, the purpose of the program, and the
16 offender's successful compliance with the conditions set forth
17 in the order of the court.

18 Section 4. Present subsection (6) of section 948.01,
19 Florida Statutes, is transferred and renumbered as subsection
20 (1) of section 948.012, Florida Statutes, to read:

21 948.012 Split sentence of probation or community
22 control and imprisonment.--

23 (1)~~(6)~~ Whenever punishment by imprisonment for a
24 misdemeanor or a felony, except for a capital felony, is
25 prescribed, the court, in its discretion, may, at the time of
26 sentencing, impose a split sentence whereby the defendant is
27 to be placed on probation or, with respect to any such felony,
28 into community control upon completion of any specified period
29 of such sentence which may include a term of years or less.
30 In such case, the court shall stay and withhold the imposition
31 of the remainder of sentence imposed upon the defendant and

1 direct that the defendant be placed upon probation or into
2 community control after serving such period as may be imposed
3 by the court. The period of probation or community control
4 shall commence immediately upon the release of the defendant
5 from incarceration, whether by parole or gain-time allowances.

6 Section 5. Subsection (7) of section 948.01, Florida
7 Statutes, is amended to read:

8 948.01 When court may place defendant on probation or
9 into community control.--

10 (7) ~~In no case shall~~ The imposition of sentence may
11 not be suspended and the defendant thereupon placed on
12 probation or into community control unless the ~~such~~ defendant
13 is placed under the custody of the department or another
14 public or private entity. A private entity may not provide
15 probationary or supervision services to felony or misdemeanor
16 offenders sentenced or placed on probation or other
17 supervision by the circuit court.

18 Section 6. Present subsection (9) of section 948.10,
19 Florida Statutes, is redesignated as subsection (12) of
20 section 948.10, Florida Statutes, and present subsection (9)
21 of section 948.01, Florida Statutes, is transferred and
22 renumbered as subsection (9) of section 948.10, Florida
23 Statutes, to read:

24 948.10 Community control programs.--

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

28 Section 7. Present subsections (2) through (7) of
29 section 948.10, Florida Statutes, are redesignated as
30 subsections (3) through (8), respectively, and present
31 subsection (10) of section 948.01, Florida Statutes, is

1 transferred and renumbered as subsection (2) of section
2 948.10, Florida Statutes, to read:

3 948.10 Community control programs.--

4 (2)~~(10)~~ An offender may not be placed in community
5 control if:

6 (a) Convicted of or adjudication withheld for a
7 forcible felony as defined in s. 776.08, and

8 (b) Previously convicted of or adjudication withheld
9 for a forcible felony as defined in s. 776.08.

10

11 Nothing in this subsection prohibits placement of certain
12 inmates on community control pursuant to s. 947.1747. For the
13 purposes of this subsection, a forcible felony does not
14 include manslaughter or burglary.

15 Section 8. Present subsection (11) of section 948.01,
16 Florida Statutes, is transferred and renumbered as subsection
17 (2) of section 948.012, Florida Statutes, to read:

18 948.012 Split sentence of probation or community
19 control and imprisonment.--

20 (2)~~(11)~~ The court may also impose a split sentence
21 whereby the defendant is sentenced to a term of probation
22 which may be followed by a period of incarceration or, with
23 respect to a felony, into community control, as follows:

24 (a) If the offender meets the terms and conditions of
25 probation or community control, any term of incarceration may
26 be modified by court order to eliminate the term of
27 incarceration.

28 (b) If the offender does not meet the terms and
29 conditions of probation or community control, the court may
30 revoke, modify, or continue the probation or community control
31 as provided in s. 948.06. If the probation or community

1 control is revoked, the court may impose any sentence that it
2 could have imposed at the time the offender was placed on
3 probation or community control. The court may not provide
4 credit for time served for any portion of a probation or
5 community control term toward a subsequent term of probation
6 or community control. However, the court may not impose a
7 subsequent term of probation or community control which, when
8 combined with any amount of time served on preceding terms of
9 probation or community control for offenses pending before the
10 court for sentencing, would exceed the maximum penalty
11 allowable as provided in s. 775.082. Such term of
12 incarceration shall be served under applicable law or county
13 ordinance governing service of sentences in state or county
14 jurisdiction. This paragraph does not prohibit any other
15 sanction provided by law.

16 Section 9. Present subsection (12) of section 948.01,
17 Florida Statutes, is transferred and renumbered as subsection
18 (3) of section 948.012, Florida Statutes, and amended to read:

19 948.012 Split sentence of probation or community
20 control and imprisonment.--

21 (3)~~(12)~~ The court may also impose split probation
22 whereby, upon satisfactory completion of half the term of
23 probation, the Department of Corrections may place the
24 offender on administrative probation ~~as defined in s. 948.001~~
25 for the remainder of the term of supervision.

26 Section 10. Present subsection (13) of section 948.01,
27 Florida Statutes, is transferred and renumbered as section
28 948.20, Florida Statutes, and amended to read:

29 948.20~~(13)~~ Drug offender probation.--If it appears to
30 the court upon a hearing that the defendant is a chronic
31 substance abuser whose criminal conduct is a violation of s.

1 893.13(2)(a) or (6)(a), the court may either adjudge the
2 defendant guilty or stay and withhold the adjudication of
3 guilt; and, in either case, it may stay and withhold the
4 imposition of sentence and place the defendant on drug
5 offender probation.

6 (1)~~(a)~~ The Department of Corrections shall develop and
7 administer a drug offender probation program which emphasizes
8 a combination of treatment and intensive community supervision
9 approaches and which includes provision for supervision of
10 offenders in accordance with a specific treatment plan. The
11 program may include the use of graduated sanctions consistent
12 with the conditions imposed by the court. Drug offender
13 probation status shall include surveillance and random drug
14 testing, and may include those measures normally associated
15 with community control, except that specific treatment
16 conditions and other treatment approaches necessary to monitor
17 this population may be ordered.

18 (2)~~(b)~~ Offenders placed on drug offender probation are
19 subject to revocation of probation as provided in s. 948.06.

20 Section 11. Present subsection (14) of section 948.01,
21 Florida Statutes, is transferred and renumbered as subsection
22 (3) of section 948.101, Florida Statutes, to read:

23 948.101 Terms and conditions of community control and
24 criminal quarantine community control.--

25 (3)~~(14)~~ The court may place a defendant who is being
26 sentenced for criminal transmission of HIV in violation of s.
27 775.0877 on criminal quarantine community control. The
28 Department of Corrections shall develop and administer a
29 criminal quarantine community control program emphasizing
30 intensive supervision with 24-hour-per-day electronic
31 monitoring. Criminal quarantine community control status must

1 include surveillance and may include other measures normally
2 associated with community control, except that specific
3 conditions necessary to monitor this population may be
4 ordered.

5 Section 12. Present subsection (15) of section 948.01,
6 Florida Statutes, is transferred and renumbered as subsection
7 (2) of 948.013, Florida Statutes, and amended to read:

8 948.013 Administrative probation.--

9 (1) The Department of Corrections may establish
10 procedures for transferring an offender to administrative
11 probation. The department may collect an initial processing
12 fee of up to \$50 for each probationer transferred to
13 administrative probation. The offender is exempt from further
14 payment for the cost of supervision as required in s. 948.09.

15 (2)~~(15)~~ Effective for an offense committed on or after
16 July 1, 1998, a person is ineligible for placement on
17 administrative probation if the person is sentenced to or is
18 serving a term of probation or community control, regardless
19 of the conviction or adjudication, for committing, or
20 attempting, conspiring, or soliciting to commit, any of the
21 felony offenses described in s. 787.01 or s. 787.02, where the
22 victim is a minor and the defendant is not the victim's
23 parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s.
24 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135; or s.
25 847.0145.

26 Section 13. Section 948.011, Florida Statutes, is
27 amended to read:

28 948.011 When court may impose fine and place on
29 probation or into community control as an alternative to
30 imprisonment.--When the law authorizes the placing of a
31 defendant on probation, and when the defendant's offense is

1 punishable by both fine and imprisonment, the trial court may,
2 in its discretion, impose a fine upon him or her and place him
3 or her on probation or into community control as an
4 alternative to imprisonment.

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

8 948.03 Terms and conditions of probation ~~or community~~
9 ~~control~~.--

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

20 (a) Report to the probation and parole supervisors as
21 directed.

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

24 (c) Work faithfully at suitable employment insofar as
25 may be possible.

26 (d) Remain within a specified place.

27 (e) Make reparation or restitution to the aggrieved
28 party for the damage or loss caused by his or her offense in
29 an amount to be determined by the court. The court shall make
30 such reparation or restitution a condition of probation,
31 unless it determines that clear and compelling reasons exist

1 to the contrary. If the court does not order restitution, or
2 orders restitution of only a portion of the damages, as
3 provided in s. 775.089, it shall state on the record in detail
4 the reasons therefor.

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

17 (g) Support his or her legal dependents to the best of
18 his or her ability.

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

22 (i) Pay any application fee assessed under s.
23 27.52(2)(a) and attorney's fees and costs assessed under s.
24 938.29, subject to modification based on change of
25 circumstances.

26 (j) Not associate with persons engaged in criminal
27 activities.

28 (k)1. Submit to random testing as directed by the
29 correctional probation officer or the professional staff of
30 the treatment center where he or she is receiving treatment to
31

1 determine the presence or use of alcohol or controlled
2 substances.

3 2. If the offense was a controlled substance violation
4 and the period of probation immediately follows a period of
5 incarceration in the state correction system, the conditions
6 shall include a requirement that the offender submit to random
7 substance abuse testing intermittently throughout the term of
8 supervision, upon the direction of the correctional probation
9 officer as defined in s. 943.10(3).

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

13 (m) Be prohibited from using intoxicants to excess or
14 possessing any drugs or narcotics unless prescribed by a
15 physician. The probationer or community controllee shall not
16 knowingly visit places where intoxicants, drugs, or other
17 dangerous substances are unlawfully sold, dispensed, or used.

18 (n) Submit to the drawing of blood or other biological
19 specimens as prescribed in ss. 948.014 and 943.325, and
20 reimburse the appropriate agency for the costs of drawing and
21 transmitting the blood or other biological specimens to the
22 Department of Law Enforcement.

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

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

1 Section 15. Present subsection (2) of section 948.03,
2 Florida Statutes, is transferred and renumbered as subsection
3 (1) of section 948.101, Florida Statutes, and amended to read:

4 948.101 Terms and conditions of community control and
5 criminal quarantine community control.--

6 (1) The court shall determine the terms and conditions
7 of community control. Conditions specified in this subsection
8 do not require oral pronouncement at the time of sentencing
9 and may be considered standard conditions of community
10 control.

11 ~~(2)~~(a) The court shall require intensive supervision
12 and surveillance for an offender placed into community
13 control, which may include but is not limited to:

14 1. Specified contact with the parole and probation
15 officer.

16 2. Confinement to an agreed-upon residence during
17 hours away from employment and public service activities.

18 3. Mandatory public service.

19 4. Supervision by the Department of Corrections by
20 means of an electronic monitoring device or system.

21 5. The standard conditions of probation set forth in
22 s. 948.03(1) and (2).

23 (b) For an offender placed on criminal quarantine
24 community control, the court shall require:

25 1. Electronic monitoring 24 hours per day.

26 2. Confinement to a designated residence during
27 designated hours.

28 (2) The enumeration of specific kinds of terms and
29 conditions does not prevent the court from adding thereto any
30 other terms or conditions that the court considers proper.

31 However, the sentencing court may only impose a condition of

1 supervision allowing an offender convicted of s. 794.011, s.
2 800.04, s. 827.071, or s. 847.0145 to reside in another state
3 if the order stipulates that it is contingent upon the
4 approval of the receiving state interstate compact authority.
5 The court may rescind or modify at any time the terms and
6 conditions theretofore imposed by it upon the offender in
7 community control. However, if the court withholds
8 adjudication of guilt or imposes a period of incarceration as
9 a condition of community control, the period may not exceed
10 364 days, and incarceration shall be restricted to a county
11 facility, a probation and restitution center under the
12 jurisdiction of the Department of Corrections, a probation
13 program drug punishment phase I secure residential treatment
14 institution, or a community residential facility owned or
15 operated by any entity providing such services.

16 Section 16. Present subsection (3) of section 948.03,
17 Florida Statutes, is transferred and renumbered as section
18 948.11, Florida Statutes, and amended to read:

19 948.11 Electronic monitoring devices.--~~Pursuant to~~
20 ~~chapter 287, the department shall issue a request for proposal~~
21 ~~for electronic monitoring devices to be utilized by the~~
22 ~~department for purposes of electronic monitoring under this~~
23 ~~section or any other section of law which authorizes~~
24 ~~electronic monitoring. Electronic monitoring devices certified~~
25 ~~for use by the department must be licensed by the FCC, must be~~
26 ~~capable of maintaining full operation on a backup power source~~
27 ~~for 8 hours, and must meet such other necessary and vital~~
28 ~~specifications as may be set by the department for~~
29 ~~tamper-alert, efficient, and economical usage. The provisions~~
30 ~~of this section do not apply to passive devices.~~

31

1 ~~(1)(3)(a)±~~ The Department of Corrections may, at its
2 discretion, electronically monitor an offender sentenced to
3 community control.

4 ~~(b)2~~. The Department of Corrections shall
5 electronically monitor an offender sentenced to criminal
6 quarantine community control 24 hours per day.

7 ~~(2)(b)~~ Any offender placed on community control who
8 violates the terms and conditions of community control and is
9 restored to community control may be supervised by means of an
10 electronic monitoring device or system.

11 ~~(3)(c)~~ For those offenders being electronically
12 monitored, the Department of Corrections shall develop
13 procedures to determine, investigate, and report the
14 offender's noncompliance with the terms and conditions of
15 sentence 24 hours per day. All reports of noncompliance shall
16 be immediately investigated by a community control officer.

17 ~~(4)(d)~~ The Department of Corrections may contract with
18 local law enforcement agencies to assist in the location and
19 apprehension of offenders who are in noncompliance as reported
20 by the electronic monitoring system. This contract is intended
21 to provide the department a means for providing immediate
22 investigation of noncompliance reports, especially after
23 normal office hours.

24 (5) Any person being electronically monitored by the
25 department as a result of placement on community control shall
26 be required to pay a surcharge as provided in s. 948.09(2).

27 Section 17. Present subsection (4) of section 948.03,
28 Florida Statutes, is transferred and renumbered as section
29 948.31, Florida Statutes, and amended to read:

30 948.31(4) Diagnosis, evaluation, and treatment of
31 offenders placed on probation or community control for certain

1 sex offenses or child exploitation.--The court shall require
2 a diagnosis and evaluation to determine the need of a
3 probationer or offender in community control for treatment.
4 If the court determines that a need therefor is established by
5 such diagnosis and evaluation process, the court shall require
6 outpatient counseling as a term or condition of probation or
7 community control for any person who was found guilty of any
8 of the following, or whose plea of guilty or nolo contendere
9 to any of the following was accepted by the court:

10 (1)~~(a)~~ Lewd or lascivious battery, lewd or lascivious
11 molestation, lewd or lascivious conduct, or lewd or lascivious
12 exhibition, as defined in s. 800.04.

13 (2)~~(b)~~ Sexual battery, as defined in chapter 794,
14 against a child.

15 (3)~~(c)~~ Exploitation of a child as provided in s.
16 450.151, or for prostitution.

17
18 Such counseling shall be required to be obtained from a
19 community mental health center, a recognized social service
20 agency providing mental health services, or a private mental
21 health professional or through other professional counseling.
22 The plan for counseling for the individual shall be provided
23 to the court for review.

24 Section 18. Present subsection (5) of section 948.03,
25 Florida Statutes, is transferred and renumbered as section
26 948.30, Florida Statutes, and amended to read:

27 948.30~~(5)~~ Additional terms and conditions of
28 probation or community control for certain sex offenses.--
29 Conditions imposed pursuant to this section ~~subsection~~, as
30 ~~specified in paragraphs (a) and (b)~~, do not require oral
31 pronouncement at the time of sentencing and shall be

1 considered standard conditions of probation or community
2 control for offenders specified in this section ~~subsection~~.

3 (1)~~(a)~~ Effective for probationers or community
4 controllees whose crime was committed on or after October 1,
5 1995, and who are placed under supervision for violation of
6 chapter 794, s. 800.04, s. 827.071, or s. 847.0145, the court
7 must impose the following conditions in addition to all other
8 standard and special conditions imposed:

9 (a)~~1~~. A mandatory curfew from 10 p.m. to 6 a.m. The
10 court may designate another 8-hour period if the offender's
11 employment precludes the above specified time, and such
12 alternative is recommended by the Department of Corrections.
13 If the court determines that imposing a curfew would endanger
14 the victim, the court may consider alternative sanctions.

15 (b)~~2~~. If the victim was under the age of 18, a
16 prohibition on living within 1,000 feet of a school, day care
17 center, park, playground, or other place where children
18 regularly congregate, as prescribed by the court. The
19 1,000-foot distance shall be measured in a straight line from
20 the offender's place of residence to the nearest boundary line
21 of the school, day care center, park, playground, or other
22 place where children congregate. The distance may not be
23 measured by a pedestrian route or automobile route.

24 (c)~~3~~. Active participation in and successful
25 completion of a sex offender treatment program with therapists
26 specifically trained to treat sex offenders, at the
27 probationer's or community controllee's own expense. If a
28 specially trained therapist is not available within a 50-mile
29 radius of the probationer's or community controllee's
30 residence, the offender shall participate in other appropriate
31 therapy.

1 (d)~~4~~. A prohibition on any contact with the victim,
2 directly or indirectly, including through a third person,
3 unless approved by the victim, the offender's therapist, and
4 the sentencing court.

5 (e)~~5~~. If the victim was under the age of 18, a
6 prohibition, until successful completion of a sex offender
7 treatment program, on unsupervised contact with a child under
8 the age of 18, unless authorized by the sentencing court
9 without another adult present who is responsible for the
10 child's welfare, has been advised of the crime, and is
11 approved by the sentencing court.

12 (f)~~6~~. If the victim was under age 18, a prohibition on
13 working for pay or as a volunteer at any school, day care
14 center, park, playground, or other place where children
15 regularly congregate.

16 (g)~~7~~. Unless otherwise indicated in the treatment plan
17 provided by the sexual offender treatment program, a
18 prohibition on viewing, owning, or possessing any obscene,
19 pornographic, or sexually stimulating visual or auditory
20 material, including telephone, electronic media, computer
21 programs, or computer services that are relevant to the
22 offender's deviant behavior pattern.

23 (h)~~8~~. A requirement that the probationer or community
24 controllee must submit a specimen ~~two specimens~~ of blood or
25 other approved biological specimen ~~specimens~~ to the Florida
26 Department of Law Enforcement to be registered with the DNA
27 data bank.

28 (i)~~9~~. A requirement that the probationer or community
29 controllee make restitution to the victim, as ordered by the
30 court under s. 775.089, for all necessary medical and related
31

1 professional services relating to physical, psychiatric, and
2 psychological care.

3 (j)~~10~~. Submission to a warrantless search by the
4 community control or probation officer of the probationer's or
5 community controllee's person, residence, or vehicle.

6 (2)~~(b)~~ Effective for a probationer or community
7 controllee whose crime was committed on or after October 1,
8 1997, and who is placed on sex offender probation for a
9 violation of chapter 794, s. 800.04, s. 827.071, or s.
10 847.0145, in addition to any other provision of this
11 subsection, the court must impose the following conditions of
12 probation or community control:

13 (a)~~1~~. As part of a treatment program, participation at
14 least annually in polygraph examinations to obtain information
15 necessary for risk management and treatment and to reduce the
16 sex offender's denial mechanisms. A polygraph examination must
17 be conducted by a polygrapher trained specifically in the use
18 of the polygraph for the monitoring of sex offenders, where
19 available, and shall be paid for by the sex offender. The
20 results of the polygraph examination shall not be used as
21 evidence in court to prove that a violation of community
22 supervision has occurred.

23 (b)~~2~~. Maintenance of a driving log and a prohibition
24 against driving a motor vehicle alone without the prior
25 approval of the supervising officer.

26 (c)~~3~~. A prohibition against obtaining or using a post
27 office box without the prior approval of the supervising
28 officer.

29 (d)~~4~~. If there was sexual contact, a submission to, at
30 the probationer's or community controllee's expense, an HIV
31

1 test with the results to be released to the victim or ~~and/or~~
2 the victim's parent or guardian.

3 (e)5. Electronic monitoring when deemed necessary by
4 the community control or probation officer and his or her
5 supervisor, and ordered by the court at the recommendation of
6 the Department of Corrections.

7 Section 19. Subsection (6) of section 948.03, Florida
8 Statutes, is amended to read:

9 948.03 Terms and conditions of probation ~~or community~~
10 ~~control~~.--

11 (6) The enumeration of specific kinds of terms and
12 conditions shall not prevent the court from adding thereto
13 such other or others as it considers proper. However, the
14 sentencing court may only impose a condition of supervision
15 allowing an offender convicted of s. 794.011, s. 800.04, s.
16 827.071, or s. 847.0145, to reside in another state, if the
17 order stipulates that it is contingent upon the approval of
18 the receiving state interstate compact authority. The court
19 may rescind or modify at any time the terms and conditions
20 theretofore imposed by it upon the probationer ~~or offender in~~
21 ~~community control~~. However, if the court withholds
22 adjudication of guilt or imposes a period of incarceration as
23 a condition of probation ~~or community control~~, the period
24 shall not exceed 364 days, and incarceration shall be
25 restricted to either a county facility, a probation and
26 restitution center under the jurisdiction of the Department of
27 Corrections, a probation program drug punishment phase I
28 secure residential treatment institution, or a community
29 residential facility owned or operated by any entity providing
30 such services.

31

1 Section 20. Present subsection (7) of section 948.03,
2 Florida Statutes, is transferred and renumbered as section
3 948.035, Florida Statutes, and amended to read:

4 948.035(7)(a) Residential treatment as a condition of
5 probation or community control.--

6 (1) If the court imposes a period of residential
7 treatment or incarceration as a condition of probation or
8 community control, the residential treatment or incarceration
9 shall be restricted to the following facilities:

10 (a)1- A Department of Corrections probation and
11 restitution center;

12 (b)2- A probation program drug punishment treatment
13 community;

14 (c)3- A community residential facility which is owned
15 and operated by any public or private entity, excluding a
16 community correctional center as defined in s. 944.026; or

17 (d)4- A county-owned facility.

18 (2)(b) It is the intent of the Legislature that a
19 county jail be used as the last available alternative for
20 placement of an offender as a condition of probation.
21 However, this shall not create a right of placement for the
22 probationer, nor shall it restrict judicial discretion in
23 ordering such treatment or incarceration.

24 (3)(e) Prior to admission to such a facility or
25 treatment community, the court shall obtain an individual
26 assessment and recommendation on the appropriate treatment
27 needs pursuant to ~~chapter 953~~ or the Community Control
28 Implementation Manual which shall be considered by the court
29 in ordering such placements. Placement in such a facility or
30 center, or in the phase I secure residential phase of a
31 probation program drug punishment treatment community, shall

1 not exceed 364 days. Early completion of an offender's
2 placement shall be recommended to the court, when appropriate,
3 by the facility or center supervisor, by the supervising
4 probation officer, or by the program manager. ~~However, with~~
5 ~~respect to the placement of a probationer pursuant to chapter~~
6 ~~953, such placement shall not be completed until satisfactory~~
7 ~~completion of the drug punishment program. Termination for~~
8 ~~cause from such a program shall be pursuant to s. 953.25(4).~~
9 The Department of Corrections is authorized to contract with
10 appropriate agencies for provision of services.

11 Section 21. Present subsection (8) of section 948.03,
12 Florida Statutes, is transferred and renumbered as section
13 948.036, Florida Statutes, and amended to read:

14 948.036(8)(a) Work programs as a condition of
15 probation, community control, or other court-ordered community
16 supervision.--

17 (1) Whenever an offender is required by the court to
18 participate in any work program under the provisions of this
19 chapter, enters into the pretrial intervention program
20 pursuant to s. 948.08, or volunteers to work in a supervised
21 work program conducted by a specified state, county,
22 municipal, or community service organization or to work for
23 the victim, either as an alternative to monetary restitution
24 or as a part of the rehabilitative or community control
25 program, the offender shall be considered an employee of the
26 state for the purposes of chapter 440.

27 (2)(b) In determining the average weekly wage, unless
28 otherwise determined by a specific funding program, all
29 remuneration received from the employer shall be considered a
30 gratuity, and the offender shall not be entitled to any
31 benefits otherwise payable under s. 440.15, regardless of

1 whether the offender may be receiving wages and remuneration
2 from other employment with another employer and regardless of
3 his or her future wage-earning capacity. The provisions of
4 this subsection do not apply to any person performing labor
5 under a sentence of a court to perform community services as
6 provided in s. 316.193.

7 Section 22. Present subsection (9) of section 948.03,
8 Florida Statutes, is transferred and renumbered as section
9 948.037, Florida Statutes, and amended to read:

10 948.037(9)(a) Education and learning as a condition
11 of probation or community control.--

12 (1) As a condition of community control, probation, or
13 probation following incarceration, the court shall require an
14 offender who has not obtained a high school diploma or high
15 school equivalency diploma or who lacks basic or functional
16 literacy skills, upon acceptance by an adult education
17 program, to make a good faith effort toward completion of such
18 basic or functional literacy skills or high school equivalency
19 diploma, as defined in s. 1003.435, in accordance with the
20 assessed adult general education needs of the individual
21 offender. The court shall not revoke community control,
22 probation, or probation following incarceration because of the
23 offender's inability to achieve such skills or diploma but may
24 revoke community control, probation, or probation following
25 incarceration if the offender fails to make a good faith
26 effort to achieve such skills or diploma. The court may grant
27 early termination of community control, probation, or
28 probation following incarceration upon the offender's
29 successful completion of the approved program. As used in
30 this subsection, "good faith effort" means the offender is
31 enrolled in a program of instruction and is attending and

1 making satisfactory progress toward completion of the
2 requirements.

3 (2)~~(b)~~ A juvenile on community control who is a public
4 school student must attend a public adult education program or
5 a dropout prevention program, pursuant to s. 1003.53, which
6 includes a second chance school or an alternative to
7 expulsion, if the school district where the juvenile is
8 enrolled offers such programs, unless the principal of the
9 school determines that special circumstances warrant
10 continuation in the regular educational school program.

11 (3)~~(c)~~ If a juvenile on community control attends a
12 regular educational school program because a public adult
13 education program or dropout prevention program, which
14 includes a second chance school or an alternative to
15 expulsion, is not available in the school district, the
16 identity of the juvenile on community control, the nature of
17 the felony offense committed by the juvenile, and the
18 conditions of community control must be made known to each of
19 the student's teachers.

20 Section 23. Present subsection (10) of section 948.03,
21 Florida Statutes, is transferred and renumbered as subsections
22 (1) and (2) of section 948.014, Florida Statutes, and amended
23 to read:

24 948.014~~(10)~~ Requirement to submit to drawing of blood
25 or other biological specimens.--

26 (1) As a condition of probation, community control, or
27 any other court-ordered community supervision, the court shall
28 order persons convicted of offenses specified in s. 943.325 to
29 submit to the drawing of the blood or other biological
30 specimens as prescribed in that section as a condition of the
31

1 probation, community control, or other court-ordered community
2 supervision.

3 (2) For the purposes of this section ~~subsection~~,
4 conviction shall include a finding of guilty, or entry of a
5 plea of nolo contendere or guilty, regardless of adjudication,
6 or, in the case of a juvenile, the finding of delinquency.

7 Section 24. Present subsection (11) of section 948.03,
8 Florida Statutes, is transferred and renumbered as subsection
9 (3) of section 948.014, Florida Statutes, and amended to read:

10 948.014 Requirement to submit to drawing of blood or
11 other biological specimens.--

12 (3)~~(11)~~ Any order issued pursuant to this section
13 ~~subsection (10)~~ shall also require the convicted person to
14 reimburse the appropriate agency for the costs of drawing and
15 transmitting the blood or other biological specimens to the
16 ~~Florida~~ Department of Law Enforcement.

17 Section 25. Present subsection (12) of section 948.03,
18 Florida Statutes, is transferred and renumbered as section
19 948.038, Florida Statutes, and amended to read:

20 948.038~~(12)~~ Batterers' intervention program as a
21 condition of probation, community control, or other
22 court-ordered community supervision.--As a condition of
23 probation, community control, or any other court-ordered
24 community supervision, the court shall order a person
25 convicted of an offense of domestic violence, as defined in s.
26 741.28, to attend and successfully complete a batterers'
27 intervention program unless the court determines that the
28 person does not qualify for the batterers' intervention
29 program pursuant to s. 741.325. ~~Effective July 1, 2002,~~The
30 batterers' intervention program must be a program certified
31

1 under s. 741.32 and the offender must pay the cost of
2 attending the program.

3 Section 26. Section 948.039, Florida Statutes, is
4 created to read:

5 948.039 Special terms and conditions of probation or
6 community control imposed by court order.--The court may
7 determine any special terms and conditions of probation or
8 community control. The terms and conditions should be
9 reasonably related to the circumstances of the offense
10 committed and appropriate for the offender. The court shall
11 impose the special terms and conditions by oral pronouncement
12 at sentencing and include the terms and conditions in the
13 written sentencing order. Special terms and conditions may
14 include, but are not limited to, requirements that the
15 offender:

16 (1) Attend an HIV/AIDS awareness program consisting of
17 a class of not less than 2 hours or more than 4 hours in
18 length, if such a program is available in the county of the
19 offender's residence. The offender shall pay the cost of
20 attending the program.

21 (2) Pay not more than \$1 per month during the term of
22 probation or community control to a nonprofit organization
23 established for the sole purpose of supplementing the
24 rehabilitative efforts of the Department of Corrections.

25 Section 27. Subsection (1) of section 948.06, Florida
26 Statutes, is amended to read:

27 948.06 Violation of probation or community control;
28 revocation; modification; continuance; failure to pay
29 restitution or cost of supervision.--

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

1 a probationer or offender in community control has violated
2 his or her probation or community control in a material
3 respect, any law enforcement officer who is aware of the
4 probationary or community control status of the probationer or
5 offender in community control or any parole or probation
6 supervisor may arrest or request any county or municipal law
7 enforcement officer to arrest such probationer or offender
8 without warrant wherever found and forthwith return him or her
9 to the court granting such probation or community control.

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

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

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

1 (2)(a) The court, upon the probationer or offender
2 being brought before it, shall advise him or her of such
3 charge of violation and, if such charge is admitted to be
4 true, may forthwith revoke, modify, or continue the probation
5 or community control or place the probationer into a community
6 control program.

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

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

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

24 (e) After such hearing, the court may revoke, modify,
25 or continue the probation or community control or place the
26 probationer into community control. If such probation or
27 community control is revoked, the court shall adjudge the
28 probationer or offender guilty of the offense charged and
29 proven or admitted, unless he or she has previously been
30 adjudged guilty, and impose any sentence which it might have
31

1 originally imposed before placing the probationer or offender
2 on probation or into community control.

3 (f) Notwithstanding s. 775.082, when a period of
4 probation or community control has been tolled, upon
5 revocation or modification of the probation or community
6 control, the court may impose a sanction with a term that when
7 combined with the amount of supervision served and tolled,
8 exceeds the term permissible pursuant to s. 775.082 for a term
9 up to the amount of the tolled period of supervision.

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

16 Section 28. Present subsection (2) of section 948.06,
17 Florida Statutes, is transferred and renumbered as section
18 948.32, Florida Statutes, and amended to read:

19 948.32(2)(a) Requirements of law enforcement agency
20 upon arrest of persons for certain sex offenses.--

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

30 (2)(b) If the law enforcement agency finds that the
31 person under investigation or under arrest is on probation,

1 community control, parole, conditional release, or control
2 release, the law enforcement agency shall immediately notify
3 the person's probation officer or release supervisor of the
4 investigation or the arrest.

5 Section 29. Subsections (1) and (7) of section 948.09,
6 Florida Statutes, are amended to read:

7 948.09 Payment for cost of supervision and
8 rehabilitation.--

9 (1)(a)1. Any person ordered by the court, the
10 Department of Corrections, or the parole commission to be
11 placed on probation, drug offender probation, community
12 control, parole, control release, provisional release
13 supervision, addiction-recovery supervision, or conditional
14 release supervision under chapter 944, chapter 945, chapter
15 947, chapter 948, or chapter 958, or in a pretrial
16 intervention program, must, as a condition of any placement,
17 pay the department a total sum of money equal to the total
18 month or portion of a month of supervision times the
19 court-ordered amount, but not to exceed the actual per diem
20 cost of the supervision. The department shall adopt rules by
21 which an offender who pays in full and in advance of regular
22 termination of supervision may receive a reduction in the
23 amount due. The rules shall incorporate provisions by which
24 the offender's ability to pay is linked to an established
25 written payment plan. Funds collected from felony offenders
26 may be used to offset costs of the Department of Corrections
27 associated with community supervision programs, subject to
28 appropriation by the Legislature.

29 2. In addition to any other contribution or surcharge
30 imposed by this section, each felony offender assessed under
31 this paragraph shall pay a \$2-per-month surcharge to the

1 department. The surcharge shall be deemed to be paid only
2 after the full amount of any monthly payment required by the
3 established written payment plan has been collected by the
4 department. These funds shall be used by the department to pay
5 for correctional probation officers' training and equipment,
6 including radios, and firearms training, firearms, and
7 attendant equipment necessary to train and equip officers who
8 choose to carry a concealed firearm while on duty. Nothing in
9 this subparagraph shall be construed to limit the department's
10 authority to determine who shall be authorized to carry a
11 concealed firearm while on duty, or to limit the right of a
12 correctional probation officer to carry a personal firearm
13 approved by the department.

14 (b) Any person placed on misdemeanor probation by a
15 county court must contribute not less than \$40 per month, as
16 decided by the sentencing court, to the court-approved public
17 or private entity providing misdemeanor supervision.

18 (7) The department shall establish a payment plan for
19 all costs ordered by the courts for collection by the
20 department and a priority order for payments, except that
21 victim restitution payments authorized under s. 948.03(5) ~~s.~~
22 ~~948.03(1)(e)~~ take precedence over all other court-ordered
23 payments. The department is not required to disburse
24 cumulative amounts of less than \$10 to individual payees
25 established on this payment plan.

26 Section 30. Subsection (7) of section 948.10, Florida
27 Statutes, is amended to read:

28 948.10 Community control programs.--

29 (7) If an offender is sentenced to community control
30 by the court and the offender is ineligible to be placed on
31

1 community control as provided in s. 948.10(2)~~s. 948.01(10)~~,
2 the department shall:

3 (a) Review and verify whether an ineligible offender
4 was placed on community control.

5 (b) Within 30 days after receipt of the order, notify
6 the sentencing judge, the state attorney, and the Attorney
7 General that the offender was ineligible for placement on
8 community control.

9 (c) Provide a quarterly report to the chief judge and
10 the state attorney of each circuit citing the number of
11 ineligible offenders placed on community control within that
12 circuit.

13 (d) Provide an annual report to the Governor, the
14 President of the Senate, the Speaker of the House of
15 Representatives, and the Chief Justice of the Supreme Court on
16 the placement of ineligible offenders on community control in
17 order to assist in preparing judicial education programs or
18 for any other purpose.

19 Section 31. This act shall take effect July 1, 2004.

20
21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
22 COMMITTEE SUBSTITUTE FOR
23 Senate Bill 2336

24 The CS deletes the language that is currently in s. 948.11,
25 F.S. The language was passed in 1991 to require the Department
26 of Corrections to purchase electronic monitoring devices,
27 which is now provided for in other statutes. This is
28 essentially a technical change to conform the CS with the PCB
29 that was passed out of the Criminal Justice Committee.
30
31