

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to probation and community control;
7 amending s. 947.22, F.S.; requiring law enforcement
8 officers, to the extent possible, to assist probation
9 officers in making warrantless arrests; amending s.
10 948.06, F.S.; requiring law enforcement officers, to the
11 extent possible, to assist probation officers in making
12 warrantless arrests; requiring law enforcement and
13 probation officers to arrest a probationer or offender if
14 the officer has reasonable grounds to believe that the
15 probationer or offender has violated his or her probation
16 or community control and if the officer is aware that the
17 probationer or offender has a history of convictions for
18 violence; creating s. 948.061, F.S.; requiring the
19 Department of Corrections to develop a risk assessment and
20 alert system to monitor certain offenders placed on
21 probation or community control; requiring increased
22 supervision of such offenders under certain circumstances;
23 requiring that certain information be provided to the

HB 1385

2005
CS

24 | court by the correctional probation officer; authorizing
 25 | rulemaking; creating s. 948.062, F.S.; requiring the
 26 | Department of Corrections to review the circumstances of
 27 | certain arrests of offenders on probation or community
 28 | control; requiring the Office of Program Policy Analysis
 29 | and Government Accountability to analyze the reviews and
 30 | report to the President of the Senate and the Speaker of
 31 | the House of Representatives; providing legislative
 32 | findings with respect to the necessity for increased
 33 | supervision of high-risk offenders who violate community
 34 | supervision; requesting that the Supreme Court amend a
 35 | Rule of Criminal Procedure to require that certain
 36 | offenders arrested for a violation of probation or
 37 | community control be detained while awaiting a hearing on
 38 | the violation; providing that implementation of the act is
 39 | not contingent upon an appropriation; providing an
 40 | effective date.

41 |
 42 | Be It Enacted by the Legislature of the State of Florida:

43 |
 44 | Section 1. Subsection (2) of section 947.22, Florida
 45 | Statutes, is amended to read:

46 | 947.22 Authority to arrest parole violators with or
 47 | without warrant.--

48 | (2) Any parole and probation officer, when she or he has
 49 | reasonable ground to believe that a parolee, control releasee,
 50 | or conditional releasee has violated the terms and conditions of
 51 | her or his parole, control release, or conditional release in a

HB 1385

2005
CS

52 | material respect, has the right to arrest, or to request any law
 53 | enforcement officer to arrest, the releasee or parolee without
 54 | warrant and bring her or him forthwith before one or more
 55 | commissioners or a duly authorized representative of the Parole
 56 | Commission or Control Release Authority; and proceedings shall
 57 | thereupon be had as provided herein when a warrant has been
 58 | issued by a member of the commission or authority or a duly
 59 | authorized representative of the commission or authority. To the
 60 | extent possible, local law enforcement officers shall assist the
 61 | probation officer, upon request, in making a warrantless arrest,
 62 | taking the releasee or parolee into custody, and transporting
 63 | the releasee or parolee to the county jail.

64 | Section 2. Paragraph (a) of subsection (1) of section
 65 | 948.06, Florida Statutes, is amended to read:

66 | 948.06 Violation of probation or community control;
 67 | revocation; modification; continuance; failure to pay
 68 | restitution or cost of supervision.--

69 | (1)(a)1. Whenever within the period of probation or
 70 | community control there are reasonable grounds to believe that a
 71 | probationer or offender in community control has violated his or
 72 | her probation or community control in a material respect, any
 73 | law enforcement officer who is aware of the probationary or
 74 | community control status of the probationer or offender in
 75 | community control or any parole or probation supervisor may
 76 | arrest or request any county or municipal law enforcement
 77 | officer to arrest the ~~such~~ probationer or offender without
 78 | warrant wherever found and forthwith return him or her to the
 79 | court granting ~~such~~ probation or community control. To the

80 extent possible, local law enforcement officers shall assist the
 81 probation officer, upon request, in making a warrantless arrest,
 82 taking the probationer or offender into custody, and
 83 transporting the probationer or offender to the county jail.

84 2. Whenever within the period of probation or community
 85 control there are reasonable grounds to believe that a
 86 probationer or offender in community control has violated his or
 87 her probation or community control in a material respect, any
 88 law enforcement officer or parole or probation supervisor who is
 89 aware of the probationary or community control status of the
 90 probationer or offender in community control and who is aware
 91 that the probationer or offender has a history of convictions
 92 for violence shall arrest the probationer or offender without
 93 warrant wherever found and forthwith return him or her to the
 94 court granting the probation or community control. To the extent
 95 possible, local law enforcement officers shall assist the
 96 probation officer, upon request, in making a warrantless arrest,
 97 taking the probationer or offender into custody, and
 98 transporting the probationer or offender to the county jail.

99 Section 3. Section 948.061, Florida Statutes, is created
 100 to read:

101 948.061 Identifying, assessing, and monitoring certain
 102 high-risk offenders on community supervision; providing
 103 cumulative criminal and supervision histories to the court.--

104 (1) By December 1, 2005, the department shall develop a
 105 graduated risk assessment and alert system that continuously
 106 identifies, assesses, and closely monitors offenders who are
 107 placed on probation or in community control and who:

108 (a) Have previously been placed on probation or in
 109 community control and have a history of committing multiple
 110 violations of community supervision in this state or in any
 111 other jurisdiction or have previously been incarcerated in this
 112 state or in any other jurisdiction; and

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

- 116 1. Attempted suicide or severe depression;
- 117 2. Marital instability or a history of domestic violence;
- 118 3. A history of substance abuse;
- 119 4. Unemployment or substantial financial difficulties;
- 120 5. A history of violence, particularly involving
 121 strangers; or
- 122 6. Any other risk factor identified by the department.

123 (2) Recognizing that an offender having an extensive
 124 criminal history and multiple risk factors may pose a serious
 125 threat to the community, the department shall consider the
 126 cumulative impact of these risk factors and, if necessary, place
 127 an offender on an elevated alert status and provide a high level
 128 of supervision for the offender until the situation stabilizes
 129 and the department no longer believes that the offender poses a
 130 threat to others. In providing such supervision and
 131 surveillance, the department shall increase the number of office
 132 and home visits conducted by the correctional probation officer;
 133 expand the number of and type of employment, family, community,
 134 and neighborhood contacts by the correctional probation officer;
 135 increase referrals to available community mental health

136 facilities and community assistance programs; develop emergency
 137 communication plans and alert systems for law enforcement
 138 agencies and the court in order to quickly detain the offender
 139 in response to a violation; and prioritize departmental
 140 resources in order to more closely monitor the offender's
 141 activities in an effort to prevent escalating criminal behavior.

142 (3) In providing criminal history and background
 143 information to the court for these high-risk offenders, the
 144 correctional probation officer shall provide in each report
 145 submitted to the court and at each hearing before the court a
 146 clear, complete, and concise cumulative and integrated
 147 chronology of the offender's criminal history and prior terms of
 148 probation or community control, including all substantive or
 149 technical violations of probation or community control.

150 (4) The department may adopt rules as necessary to
 151 administer this section.

152 Section 4. Section 948.062, Florida Statutes, is created
 153 to read:

154 948.062 Reviewing and reporting serious offenses committed
 155 by offenders placed on probation or community control.--

156 (1) The department shall review the circumstances related
 157 to offenders placed on probation or community control who have
 158 been arrested while on supervision for the following offenses:

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

160 (b) Any sexual battery as provided in s. 794.011 or s.
 161 794.023;

162 (c) Any sexual performance by a child as provided in s.
 163 827.071;

HB 1385

2005
CS

- 164 (d) Any kidnapping, false imprisonment, or luring of a
- 165 child as provided in s. 787.01, s. 787.02, or s. 787.025;
- 166 (e) Any lewd and lascivious battery or lewd and lascivious
- 167 molestation as provided in s. 800.04(4) or (5);
- 168 (f) Any aggravated child abuse as provided in s.
- 169 827.03(2);
- 170 (g) Any robbery with a firearm or other deadly weapon,
- 171 carjacking, or home-invasion robbery as provided in s.
- 172 812.13(2)(a), s. 812.133, or s. 812.135;
- 173 (h) Any aggravated stalking as provided in s. 784.048(3),
- 174 (4), or (5);
- 175 (i) Any forcible felony as provided in s. 776.08 committed
- 176 by any person on probation or community control who is
- 177 designated as a sexual predator; or
- 178 (j) Any DUI manslaughter as provided in s. 316.193(3)(c),
- 179 or vehicular or vessel homicide as provided in s. 782.071 or s.
- 180 782.072, committed by any person who is on probation or
- 181 community control for an offense involving death or injury
- 182 resulting from a driving incident.

183

184 The review shall document whether the supervision of the

185 offender met enumerated rules, policies, and procedures and

186 whether supervision practices were followed.

187 (2) The department shall provide these reviews to the

188 Office of Program Policy Analysis and Government Accountability.

189 The Office of Program Policy Analysis and Government

190 Accountability shall analyze these reviews and provide a written

191 report to the President of the Senate and the Speaker of the

HB 1385

2005
CS

192 House of Representatives by March 1, 2006. The report must
193 include, at a minimum, any identified systemic deficiencies in
194 managing high-risk offenders on community supervision, any
195 patterns of noncompliance by correctional probation officers,
196 and any recommendations for improving the community supervision
197 program.

198 Section 5. (1) The 2005 Legislature closely examined
199 chapter 948, Florida Statutes, to address certain critical
200 public safety concerns and substantive policy issues involving
201 offenders who violate probation or community control. The
202 Legislature has carefully scrutinized the effectiveness of the
203 state's community supervision system and concluded that the
204 system should increase the level of supervision of high-risk
205 offenders who violate probation or community control. The
206 Legislature finds that offenders having extensive criminal
207 histories and multiple risk factors may pose a serious threat to
208 the community. In addition, the Legislature finds that the
209 system should consider the cumulative impact of the offenders'
210 histories and risk factors and quickly detain offenders alleged
211 to be in violation of probation or community control in order to
212 protect the public and prevent escalating criminal behavior.

213 (2)(a) Therefore, the Legislature strongly urges the
214 Florida Supreme Court to amend the concomitant Rule of Criminal
215 Procedure that sets forth the procedures for the lower courts to
216 follow when considering bail in cases of violations of probation
217 or community control.

218 (b) As the Florida Supreme Court opined in Bernhardt v.
219 State, 288 So.2d 490 (Fla. 1974), release on bail pending a

HB 1385

2005
CS

220 revocation-of-probation hearing is not a constitutional right.
 221 However, the Legislature recognizes that it is the prerogative
 222 of the Florida Supreme Court to act in the area of practice and
 223 procedure. The Legislature, therefore, recommends that the
 224 Florida Supreme Court consider revising Rule 3.790, Florida
 225 Rules of Criminal Procedure, regarding bail in certain cases
 226 involving a violation of probation or community control.

227 (c) Specifically, the Florida Supreme Court is requested
 228 to amend its rule to require that a probationer or community
 229 controllee who is arrested on an alleged violation, regardless
 230 of adjudication in the underlying offense, be detained while
 231 awaiting a hearing before the court that granted the probation
 232 or community control, if the offense for which the probationer
 233 or community controllee is currently on probation or community
 234 control is a forcible felony or if the probationer or community
 235 controllee has previously been convicted of a forcible felony as
 236 provided in s. 776.08, Florida Statutes.

237 Section 6. This act is not contingent upon the
 238 appropriation of funds for its implementation.

239 Section 7. This act shall take effect upon becoming a law.