

By the Committee on Criminal Justice; and Senator Lynn

591-1847-05

1 A bill to be entitled
2 An act relating to probation and community
3 control; amending s. 947.22, F.S.; requiring
4 law enforcement officers to assist probation
5 officers in making warrantless arrests;
6 amending s. 948.06, F.S.; requiring law
7 enforcement officers to assist probation
8 officers in making warrantless arrests;
9 requiring law enforcement and probation
10 officers to arrest a probationer or offender if
11 the officer has reasonable grounds to believe
12 that the probationer or offender has violated
13 his or her probation or community control and
14 if the officer is aware that the probationer or
15 offender has a history of convictions for
16 violence; creating s. 948.061, F.S.; requiring
17 the Department of Corrections to develop a risk
18 assessment and alert system to monitor certain
19 offenders placed on probation or community
20 control; requiring increased supervision of
21 such offenders under certain circumstances;
22 requiring that information be provided to the
23 court by the correctional probation officer;
24 authorizing the department to adopt rules;
25 creating s. 948.062, F.S.; requiring the
26 Department of Corrections to review the
27 circumstances of certain arrests of offenders
28 on probation or community control; requiring
29 the Office of Program Policy Analysis and
30 Government Accountability to analyze the
31 reviews and report to the President of the

1 Senate and the Speaker of the House of
2 Representatives; providing legislative findings
3 with respect to the necessity for increased
4 supervision of high-risk offenders who violate
5 community supervision; requesting that the
6 Supreme Court amend a Rule of Criminal
7 Procedure to require that certain offenders
8 arrested for a violation of probation or
9 community control be detained while awaiting a
10 hearing on the violation; providing for
11 implementation; providing an effective date.
12

13 Be It Enacted by the Legislature of the State of Florida:
14

15 Section 1. Subsection (2) of section 947.22, F.S., is
16 amended to read:

17 947.22 Authority to arrest parole violators with or
18 without warrant.--

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

1 possible, local law enforcement officers shall assist the
2 probation officer, upon request, in making a warrantless
3 arrest, taking the releasee or parolee into custody, and
4 transporting the releasee or parolee to the county jail.

5 Section 2. Paragraph (a) of subsection (1) of section
6 948.06, Florida Statutes, is amended to read:

7 948.06 Violation of probation or community control;
8 revocation; modification; continuance; failure to pay
9 restitution or cost of supervision.--

10 (1)(a)1. Whenever within the period of probation or
11 community control there are reasonable grounds to believe that
12 a probationer or offender in community control has violated
13 his or her probation or community control in a material
14 respect, any law enforcement officer who is aware of the
15 probationary or community control status of the probationer or
16 offender in community control or any parole or probation
17 supervisor may arrest or request any county or municipal law
18 enforcement officer to arrest the ~~such~~ probationer or offender
19 without warrant wherever found and forthwith return him or her
20 to the court granting ~~such~~ probation or community control. To
21 the extent possible, local law enforcement officers shall
22 assist the probation officer, upon request, in making a
23 warrantless arrest, taking the probationer or offender into
24 custody, and transporting the probationer or offender to the
25 county jail.

26 2. Whenever within the period of probation or
27 community control there are reasonable grounds to believe that
28 a probationer or offender in community control has violated
29 his or her probation or community control in a material
30 respect, any law enforcement officer or parole or probation
31 supervisor who is aware of the probationary or community

1 control status of the probationer or offender in community
2 control and who is aware that the probationer or offender has
3 a history of convictions for violence shall arrest the
4 probationer or offender without warrant wherever found and
5 forthwith return him or her to the court granting the
6 probation or community control. To the extent possible, local
7 law enforcement officers shall assist the probation officer,
8 upon request, in making a warrantless arrest, taking the
9 probationer or offender into custody, and transporting the
10 probationer or offender to the county jail.

11 Section 3. Section 948.061, Florida Statutes, is
12 created to read:

13 948.061 Identifying, assessing, and monitoring certain
14 high-risk offenders on community supervision; providing
15 cumulative criminal and supervision histories to the court.--

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

20 (a) Have previously been placed on probation or in
21 community control and have a history of committing multiple
22 violations of community supervision in this state or in any
23 other jurisdiction or have previously been incarcerated in
24 this state or in any other jurisdiction; and

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

- 28 1. Attempted suicide or severe depression;
29 2. Marital instability or a history of domestic
30 violence;
31 3. A history of substance abuse;

1 4. Unemployment or substantial financial difficulties;
2 5. A history of violence, particularly involving
3 strangers; or
4 6. Any other risk factor identified by the department.
5 (2) Recognizing that an offender having an extensive
6 criminal history and multiple risk factors may pose a serious
7 threat to the community, the department shall consider the
8 cumulative impact of these risk factors and, if necessary,
9 place an offender on an elevated alert status and provide a
10 high level of supervision for the offender until the situation
11 stabilizes and the department no longer believes that the
12 offender poses a threat to others. In providing such
13 supervision and surveillance, the department shall increase
14 the number of office and home visits conducted by the
15 correctional probation officer; expand the number of and type
16 of employment, family, community, and neighborhood contacts by
17 the correctional probation officer; increase referrals to
18 available community mental health facilities and community
19 assistance programs; develop emergency communication plans and
20 alert systems for law enforcement agencies and the court in
21 order to quickly detain the offender in response to a
22 violation; and prioritize departmental resources in order to
23 more closely monitor the offender's activities in an effort to
24 prevent escalating criminal behavior.
25 (3) In providing criminal history and background
26 information to the court for these high-risk offenders, the
27 correctional probation officer shall provide in each report
28 submitted to the court and at each hearing before the court a
29 clear, complete, and concise cumulative and integrated
30 chronology of the offender's criminal history and prior terms
31

1 of probation or community control, including all substantive
2 or technical violations of probation or community control.

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

5 Section 4. Section 948.062, Florida Statutes, is
6 created to read:

7 948.062 Reviewing and reporting serious offenses
8 committed by offenders placed on probation or community
9 control.--

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

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

15 (b) Any sexual battery as provided in s. 794.011 or s.
16 794.023;

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

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

21 (e) Any lewd and lascivious battery or lewd and
22 lascivious molestation as provided in s. 800.04(4) or s.
23 800.04(5);

24 (f) Any aggravated child abuse as provided in s.
25 827.03(2);

26 (g) Any robbery with a firearm or other deadly weapon,
27 home invasion robbery, or carjacking as provided in s.
28 812.13(2)(a), s. 812.135, or s. 812.133;

29 (h) Any aggravated stalking as provided in s.
30 784.048(3), (4), or (5);

31

1 (i) Any forcible felony as provided in s. 776.08,
2 committed by any person on probation or community control who
3 is designated as a sexual predator; or

4 (j) Any DUI manslaughter as provided in s.
5 316.193(3)(c), or vehicular or vessel homicide as provided in
6 s. 782.071 or s. 787.072, committed by any person who is on
7 probation or community control for an offense involving death
8 or injury resulting from a driving incident.

9
10 The review shall document whether the supervision of the
11 offender met enumerated rules, policies, and procedures and
12 whether supervision practices were followed.

13 (2) The department shall provide these reviews to the
14 Office of Program Policy Analysis and Government
15 Accountability. The Office of Program Policy Analysis and
16 Government Accountability shall analyze these reviews and
17 provide a written report to the President of the Senate and
18 the Speaker of the House of Representatives by March 1, 2006.
19 The report must include, at a minimum, any identified systemic
20 deficiencies in managing high-risk offenders on community
21 supervision; any patterns of noncompliance by correctional
22 probation officers; and recommendations for improving the
23 community supervision program.

24 Section 5. (1) The 2005 Legislature closely examined
25 chapter 948, Florida Statutes, to address certain critical
26 public safety concerns and substantive policy issues involving
27 offenders who violate probation or community control. The
28 Legislature has carefully scrutinized the effectiveness of the
29 state's community supervision system and concluded that the
30 system should increase the level of supervision of high-risk
31 offenders who violate probation or community control. The

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

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

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

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

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

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

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

7
8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 Senate Bill 172

- 11 - The original language requiring law enforcement officers
12 to assist probation officers in making warrantless
13 arrests is changed. Law enforcement officers are no
14 longer mandated to assist in making the arrests for
15 probation violations but are requested to assist "to the
16 extent possible."
17 - Proposed section 948.061(3), F.S., is amended to clarify
18 that background information is not required on all
19 offender reports for the court but only the reports for
20 high risk offenders.
21 - The Department of Corrections is given authority to adopt
22 rules that are necessary to implement section 3 of the
23 bill which requires the development of risk assessments,
24 the elevated alert system, and reports to the court on a
25 violator's history.
26 - The review report originally required of OPPAGA has been
27 changed. Rather than making an annual report of the
28 department's reviews, OPPAGA is now required to issue one
29 report by March 1, 2006. The report no longer needs to
30 analyze the judicial disposition of high risk offender
31 cases or inconsistent or inefficient judicial case
processing.
- A final provision is added to the bill stating that funds
do not need to be appropriated for this act to be
implemented.