

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Personal responsibility -- This bill encourages responsible behavior by persons subject to probation or community control by increasing the penalties for violation of probation or community control.

B. EFFECT OF PROPOSED CHANGES:

Probation is a form of community supervision requiring specified contacts with parole and probation officers, standard terms and conditions in statute, and any specific terms and conditions required by the sentencing court.¹ Community Control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.²

The statutory terms and conditions required of persons on probation or community control, as provided by s. 948.03, F.S., are that the offender must:

- Report to the probation and parole supervisors as directed.
- Permit such supervisors to visit him or her at his or her home or elsewhere.
- Work faithfully at suitable employment insofar as may be possible.
- Remain within a specified place.
- Make reparation or restitution.
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility.
- Support his or her legal dependents to the best of his or her ability.
- Pay any monies owed to the crime victims compensation trust fund.
- Pay the application fee and costs of the public defender.
- Not associate with persons engaged in criminal activities.
- Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.
- Not possess, carry, or own any firearm unless authorized by the court and consented to by the probation officer.
- Not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician.
- Not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- Submit to the drawing of blood or other biological specimens, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

Section 948.06, F.S., provides procedures regarding violation of the terms and conditions required of a person on probation or community control. Upon violation, the offender is arrested and brought before the sentencing court. At the first hearing on the violation, the offender is advised of the charge. If the

¹ Section 948.001(5), F.S.

² Section 948.001(2), F.S.

offender admits the charge, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If the offender denies having violated the terms of the probation or community control, the court may commit him or her or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. Unless dismissed, the court must conduct a hearing and determine whether the offender has violated. If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If probation or community control is revoked, the court must adjudicate the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed before placing the probationer on probation or the offender into community control.

The Criminal Punishment Code, ss. 921.002 through 921.0027, F.S., is applicable to all offenses committed on or after October 1, 1998. The code provides a mathematical formula that determines the minimum sentence that a court may impose upon an offender. The minimum sentence is calculated based upon the total number of points assessed against the offender. If the total points exceed 44, the court must subtract 28 points and multiply by 75%. The resulting number is the minimum number of months in state prison that the offender must serve. However, the court may find that one of the mitigating circumstances at s. 921.0026, F.S., warrants a downward departure. Where a downward departure is granted, the court may sentence the offender to less than the minimum sentence.

If an offender is resentenced after being found guilty of violating the terms of his or her probation or community control, the total points are re-calculated, adding 12 points for a violation resulting from committing a new felony offense, or 6 points for any violation other than a new felony offense. The effect of the additional points may compel the sentencing court to impose a new state prison sentence, unless the court finds grounds for a downward departure.

Effect of Bill

This bill creates the "Anti-Murder Act".

This bill creates s. 903.0351, F.S., which provides that a forcible felony violator may not be granted bail pending resolution of the charge of violation of probation or community control, unless the violation is based solely on a failure to pay costs, fines, or restitution payments. A corresponding change is made to s. 948.06(4), F.S., regarding forcible felony violators who are captured in a county other than the sentencing county, denying bail to such offenders unless the violation is for a failure to pay costs, fines, or restitution payments.

This bill amends s. 948.06, F.S., regarding violation of probation, creating a new subsection (8) regarding forcible felony violators. The bill defines "forcible felony violator" as a person who is:

- On probation or community control related to the commission of a qualifying offense,
- On probation or community control for any offense committed on or after July 1, 2005, and who then commits a qualifying offense, or
- On probation or community control for any offense committed on or after July 1, 2005, and is found to have violated that probation or community control by committing a qualifying offense.

This bill provides that commission of any listed offense on or after July 1, 2005 is a "qualifying offense." The listed offenses are:

- Any forcible felony as defined in s. 776.08, F.S. That section lists the following offenses: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. However, offenses under s. 810.02(4), F.S. (burglary of an unoccupied structure) are excluded. Both commission of the crime, and an attempt to commit the crime, are included.
- Lewd or lascivious offense committed upon or in the presence of persons less than 16 years of age, as defined in s. 800.04, F.S.
- An offense in another jurisdiction that would meet the definitions of these offenses if committed in Florida.

This bill provides that, as to any person who is a forcible felony violator, who violates any condition of probation other than a failure to pay costs, fines, or restitution:

- No bail is allowed.
- The court may not dismiss the violation unless the court conducts a recorded hearing at which the state and the offender are represented.

If the court finds that a forcible felony violator has violated any nonmonetary terms of probation or community control, the court must revoke the probation or community control, adjudge the offender guilty, and must resentence the offender under the Criminal Sentencing Code, s. 921.0024, F.S.

Before the court may impose a sentence other than state prison, the court must conduct a Danger to the Community hearing to determine the nature and probability of any danger that the forcible felony violator poses to the community. The court must make a written finding whether the court finds a forcible felony violator poses a danger to the community. If the court determines, by a preponderance of the evidence, that a forcible felony violator poses a danger to the community, the court must sentence the violator pursuant to the Criminal Punishment Code and up to the statutory maximum, and may not grant the offender a downward departure sentence.

If the court finds, or the state stipulates, that the release of the forcible felony violator does not pose a danger to the community, the court may sentence the forcible felony violator according to the Criminal Punishment Code, s. 921.0024, F.S., and may grant a downward departure sentence.

This bill amends s. 921.0024, F.S., to modify the formula for determining the Total Sentence Points under the Criminal Punishment Code. A forcible felony violator is assessed 12 points for a violation that does not involve a new felony conviction (as opposed to the 6 points assessed under current law), and is assessed 24 points for a violation that involves a new felony conviction (as opposed to the 12 points assessed under current law). These additional points will have the effect of lengthening the minimum sentence required by the Criminal Punishment Code.

C. SECTION DIRECTORY:

Section 1 names the act.

Section 2 creates s. 903.0351, F.S., denying bail for forcible felony violators.

Section 3 amends s. 948.06, F.S., defining forcible felony violator and requiring a danger to community hearing.

Section 4 amends s. 921 .0024, F.S., to increase points for community sanction violations.

Section 5, 6 and 7 republish sections of law that may be affected by the changes made in this bill.

Section 8 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference has not estimated the prison bed impact of this bill.

The committee asked the State Courts System to provide judicial workload estimates. The State Courts System replied that they are "unable to determine amount."³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Unknown and likely significant. This bill requires a forcible felony violator to be detained without bail pending the final hearing on the violation. Any such violator will be held in a county jail at county expense. Standard practice in some counties is that all probation violators are typically held without bail, those counties will not see an increased cost as a result of this bill. Counties that do grant bail to probation violators pending a final hearing are typically also counties whose jail is at or near full capacity. In such counties, this bill will either require early release of other prisoners, or increased jail construction and maintenance expenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may affect bail bond agents, as there may be fewer persons eligible for bail.

D. FISCAL COMMENTS:

The Department of Corrections provided the following information:

As of July 31, 2004, there were 60,800 offenders on probation who would qualify as a forcible felony violator if they were to violate probation or community control. In fiscal year 2003-2004, those offenders committed an estimated 51,359 nonmonetary violations (20,003 for new arrests, and 31,356 for technical violations).

The department estimates that each hearing for a determination of Danger to the Community will require 3 hours of court time by a correctional probation officer. Preparation of paperwork, and other investigations, will add at least 2 more hours of work.

III. COMMENTS

³ Fiscal estimate dated February 14, 2005, received by the Criminal Justice Committee on February 28, 2005.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Bail

Article I, s. 14, Fla.Const., provides that “every person charged with a crime . . . shall be entitled to pretrial release on reasonable conditions”, with certain exceptions. However, this does not apply to a person on probation or community control. There is no constitutional right to bail for a probation violator.⁴ The legislature may enact laws denying bail to a class of persons convicted of a criminal offense.⁵

Sentencing Changes

This bill requires that certain offenders who violate probation or community control must be sentenced under the Criminal Punishment Code. The ex post facto clause of the state and federal constitutions⁶ prohibit retroactive criminal laws. To the extent that this bill enacts a change in the law applicable to a person who committed an offense prior to the effective date of this bill, this bill may violate the ex post facto clause. To the extent that this bill may require sentencing under the Criminal Punishment Code for an offender who committed the crime that put him or her on probation prior to enactment of the Criminal Punishment Code, this bill may violate the ex post facto clause.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2005, the Criminal Justice Committee adopted one amendment to this bill. The amendment:

- Provides for prospective application only.
- Adds that bail is not allowed for a forcible felony violator captured outside of the sentencing county.
- Removes burglary of an unoccupied structure from the list of qualifying offenses.
- Reduces the points for a violation other than a new felony conviction to 12 points.

The bill was then reported favorably with a committee substitute.

⁴ *Bernhardt v. State*, 288 So.2d 490, 497 (Fla. 1974).

⁵ *Gallie v. Wainwright*, 362 So.2d 936 (Fla. 1978) (statute denying bail pending appeal applicable to certain offenders).

⁶ Article I, s. 10, Fla.Const., Article I, s. 10, U.S.Const.