

Bill No. SB 608

Barcode 803342

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Villalobos) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. This act may be cited as the "Anti-Murder Act."

Section 2. Section 903.0351, Florida Statutes, is created to read:

903.0351 Bail or pretrial release not permitted for forcible felony violators.--A forcible felony violator as defined in s. 948.06 shall not be granted bail or any form of pretrial release prior to the resolution of the probation or community control violation hearing, unless the violation charge or arrest is based solely on failure to pay costs, fines, or restitution payments.

Section 3. Subsection (4) of section 948.06, Florida Statutes, is amended, and subsection (8) is added to said section, to read:

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1 948.06 Violation of probation or community control;
2 revocation; modification; continuance; failure to pay
3 restitution or cost of supervision.--

4 (4) Notwithstanding any other provision of this
5 section, a probationer or an offender in community control who
6 is arrested for violating his or her probation or community
7 control in a material respect may be taken before the court in
8 the county or circuit in which the probationer or offender was
9 arrested. That court shall advise him or her of such charge of
10 a violation and, if such charge is admitted, shall cause him
11 or her to be brought before the court which granted the
12 probation or community control. If such violation is not
13 admitted by the probationer or offender, the court may commit
14 him or her or release him or her with or without bail to await
15 further hearing. The court, as soon as is practicable, shall
16 give the probationer or offender an opportunity to be fully
17 heard on his or her behalf in person or by counsel. After such
18 hearing, the court shall make findings of fact and forward the
19 findings to the court which granted the probation or community
20 control and to the probationer or offender or his or her
21 attorney. The findings of fact by the hearing court are
22 binding on the court which granted the probation or community
23 control. Upon the probationer or offender being brought before
24 it, the court which granted the probation or community control
25 may revoke, modify, or continue the probation or community
26 control or may place the probationer into community control as
27 provided in this section. However, if any violation other than
28 a failure to pay costs, fines, or restitution payments is
29 alleged to have been committed by a forcible felony violator,
30 as defined in subsection (8), the probationer or offender may
31 not be released and may not be admitted to bail but shall be

1 brought before the court that granted the probation or
2 community control.

3 (8)(a) In addition to the provisions of subsections
4 (1)-(7), this subsection provides further requirements
5 regarding a probationer or offender in community control who
6 is a forcible felony violator. The provisions of this
7 subsection shall control over any conflicting provision in
8 subsections (1)-(7).

9 (b) For purposes of this subsection and ss. 903.0351
10 and 921.0024, the term:

11 1. "Forcible felony violator" means a person who:

12 a. Is on probation or community control related to the
13 commission of a qualifying offense;

14 b. Is on probation or community control for any
15 offense committed on or after July 1, 2005, and has committed
16 a qualifying offense; or

17 c. Is on probation or community control for any
18 offense committed on or after July 1, 2005, and is found to
19 have violated that probation or community control by
20 committing a qualifying offense.

21 2. "Qualifying offense" means any of the following
22 offenses committed on or after July 1, 2005:

23 a. Any forcible felony as defined in s. 776.08,
24 excluding offenses under s. 810.02(4);

25 b. Any attempt to commit a forcible felony as defined
26 in s. 776.08, excluding offenses under s. 810.02(4);

27 c. Any offense under s. 800.04; or

28 d. Any offense in another jurisdiction that would be
29 an offense described in sub-subparagraphs a.-c. if that
30 offense had been committed in this state.

31 (c) In the case of a violation arising from any ground

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1 other than a failure to pay costs, fines, or restitution
2 payments, a forcible felony violator shall remain in custody
3 pending the resolution of the probation or community control
4 violation. The court may not dismiss the probation or
5 community control violation warrant pending against a forcible
6 felony violator without holding a recorded hearing at which
7 both the state and the violator are represented.

8 (d) If the court determines that a forcible felony
9 violator has violated any nonmonetary term of probation or
10 community control, the court must revoke the probation or
11 community control, must adjudge the probationer or offender
12 guilty of the offense charged and proven or admitted, and
13 shall sentence the probationer or offender as provided in s.
14 921.0024.

15 (e) If the court imposes a prison sentence, this
16 paragraph does not apply. Before the court may release a
17 forcible felony violator from custody or impose any nonstate
18 prison sanction for violation of probation or community
19 control, the court must hold a Danger to the Community hearing
20 to determine the danger that the forcible felony violator
21 poses to the community. The court must hold this hearing as
22 soon as practicable following the violation or probation or
23 community control hearing and may conduct the Danger to the
24 Community hearing immediately after adjudicating the
25 probationer or offender guilty of the violation.

26 1. If the court determines, by a preponderance of the
27 evidence, that a forcible felony violator poses a danger to
28 the community, the court shall sentence the violator pursuant
29 to s. 921.0024, up to and including the statutory maximum, and
30 shall neither consider the mitigating circumstances in s.
31 921.0026 nor otherwise depart downward from the sentencing

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1 guidelines.

2 2. In the case of a violation arising from any ground
3 other than failure to pay costs, fines, or restitution
4 payments, a forcible felony violator shall remain in custody
5 pending the resolution of the probation or community control
6 violation hearing, to be held within 30 days of the violator's
7 arrest. Failure to hold the hearing within 30 days shall not
8 result in any sanction to the state, nor trigger any right for
9 the forcible felony offender to be released prior to the
10 violation hearing. Upon a good faith showing of need, the
11 state or the defense may delay the hearing. If the court
12 finds, or the state stipulates, that the release of the
13 forcible felony violator does not pose a danger to the
14 community, the court may sentence the forcible felony violator
15 according to s. 921.0024 and consider any mitigating
16 circumstances provided in s. 921.0026. The court must enter a
17 written order to make a finding that the forcible felony
18 violator does not pose a danger to the community.

19 3. In determining the danger posed by the defendant's
20 release, the court may consider the nature and circumstances
21 of the violation and any new offenses charged; the defendant's
22 past and present conduct, including convictions of crimes; any
23 record of arrests without conviction for crimes involving
24 violence or sexual crimes; any other evidence of allegations
25 of unlawful sexual conduct or the use of violence by the
26 defendant; the defendant's family ties, length of residence in
27 the community, employment history, and mental condition; the
28 defendant's amenability to non-incarcerative sanctions based
29 on his or her history and conduct during the probation or
30 community control supervision from which the violation hearing
31 arises and any other previous supervisions, including

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1 disciplinary records of previous incarcerations; the
 2 likelihood that the defendant will engage again in a criminal
 3 course of conduct; the weight of the evidence against the
 4 defendant; and any other facts the court considers relevant.

5 Section 4. Paragraph (b) of subsection (1) of section
 6 921.0024, Florida Statutes, is amended to read:

7 921.0024 Criminal Punishment Code; worksheet
 8 computations; scoresheets.--

9 (1)

10 (b) WORKSHEET KEY:

11

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

16

17 Community sanction violation points are assessed when a
 18 community sanction violation is before the court for
 19 sentencing. Six (6) sentence points are assessed for each
 20 community sanction violation, and each successive community
 21 sanction violation, unless any of the following apply:

22 ~~however,~~

23 1. If the community sanction violation includes a new
 24 felony conviction before the sentencing court, twelve (12)
 25 community sanction violation points are assessed for the such
 26 violation, and for each successive community sanction
 27 violation involving a new felony conviction.

28 2. If the community sanction violation is committed by
 29 a forcible felony violator as defined in s. 948.06(8)(b), but
 30 does not include a new felony conviction, twelve (12)
 31 community sanction violation points are assessed for the

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1 violation, and for each successive community sanction
2 violation not involving a new felony conviction.

3 3. If the community sanction violation is committed by
4 a forcible felony violator as defined in s. 948.06(8)(b), and
5 includes a new felony conviction before the sentencing court,
6 twenty-four (24) community sanction violation points are
7 assessed for the violation, and for each successive community
8 sanction violation involving a new felony conviction.

9
10 Multiple counts of community sanction violations before the
11 sentencing court shall not be a basis for multiplying the
12 assessment of community sanction violation points.

13
14 Prior serious felony points: If the offender has a primary
15 offense or any additional offense ranked in level 8, level 9,
16 or level 10, and one or more prior serious felonies, a single
17 assessment of 30 points shall be added. For purposes of this
18 section, a prior serious felony is an offense in the
19 offender's prior record that is ranked in level 8, level 9, or
20 level 10 under s. 921.0022 or s. 921.0023 and for which the
21 offender is serving a sentence of confinement, supervision, or
22 other sanction or for which the offender's date of release
23 from confinement, supervision, or other sanction, whichever is
24 later, is within 3 years before the date the primary offense
25 or any additional offense was committed.

26
27 Prior capital felony points: If the offender has one or more
28 prior capital felonies in the offender's criminal record,
29 points shall be added to the subtotal sentence points of the
30 offender equal to twice the number of points the offender
31 receives for the primary offense and any additional offense. A

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1 prior capital felony in the offender's criminal record is a
 2 previous capital felony offense for which the offender has
 3 entered a plea of nolo contendere or guilty or has been found
 4 guilty; or a felony in another jurisdiction which is a capital
 5 felony in that jurisdiction, or would be a capital felony if
 6 the offense were committed in this state.

7

8 Possession of a firearm, semiautomatic firearm, or machine
 9 gun: If the offender is convicted of committing or attempting
 10 to commit any felony other than those enumerated in s.
 11 775.087(2) while having in his or her possession: a firearm as
 12 defined in s. 790.001(6), an additional 18 sentence points are
 13 assessed; or if the offender is convicted of committing or
 14 attempting to commit any felony other than those enumerated in
 15 s. 775.087(3) while having in his or her possession a
 16 semiautomatic firearm as defined in s. 775.087(3) or a machine
 17 gun as defined in s. 790.001(9), an additional 25 sentence
 18 points are assessed.

19

20 Sentencing multipliers:

21

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

29

30 Law enforcement protection: If the primary offense is a
 31 violation of the Law Enforcement Protection Act under s.

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1 775.0823(2), the subtotal sentence points are multiplied by
 2 2.5. If the primary offense is a violation of s. 775.0823(3),
 3 (4), (5), (6), (7), or (8), the subtotal sentence points are
 4 multiplied by 2.0. If the primary offense is a violation of s.
 5 784.07(3) or s. 775.0875(1), or of the Law Enforcement
 6 Protection Act under s. 775.0823(9) or (10), the subtotal
 7 sentence points are multiplied by 1.5.

8
 9 Grand theft of a motor vehicle: If the primary offense is
 10 grand theft of the third degree involving a motor vehicle and
 11 in the offender's prior record, there are three or more grand
 12 thefts of the third degree involving a motor vehicle, the
 13 subtotal sentence points are multiplied by 1.5.

14
 15 Offense related to a criminal street gang: If the offender is
 16 convicted of the primary offense and committed that offense
 17 for the purpose of benefiting, promoting, or furthering the
 18 interests of a criminal street gang as prohibited under s.
 19 874.04, the subtotal sentence points are multiplied by 1.5.

20
 21 Domestic violence in the presence of a child: If the offender
 22 is convicted of the primary offense and the primary offense is
 23 a crime of domestic violence, as defined in s. 741.28, which
 24 was committed in the presence of a child under 16 years of age
 25 who is a family or household member as defined in s. 741.28(3)
 26 with the victim or perpetrator, the subtotal sentence points
 27 are multiplied by 1.5.

28 Section 5. For the purpose of incorporating the
 29 amendment to section 948.06, Florida Statutes, in a reference
 30 thereto, paragraph (b) of subsection (2) of section 948.012,
 31 Florida Statutes, is reenacted to read:

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1 948.012 Split sentence of probation or community
2 control and imprisonment.--

3 (2) The court may also impose a split sentence whereby
4 the defendant is sentenced to a term of probation which may be
5 followed by a period of incarceration or, with respect to a
6 felony, into community control, as follows:

7 (b) If the offender does not meet the terms and
8 conditions of probation or community control, the court may
9 revoke, modify, or continue the probation or community control
10 as provided in s. 948.06. If the probation or community
11 control is revoked, the court may impose any sentence that it
12 could have imposed at the time the offender was placed on
13 probation or community control. The court may not provide
14 credit for time served for any portion of a probation or
15 community control term toward a subsequent term of probation
16 or community control. However, the court may not impose a
17 subsequent term of probation or community control which, when
18 combined with any amount of time served on preceding terms of
19 probation or community control for offenses pending before the
20 court for sentencing, would exceed the maximum penalty
21 allowable as provided in s. 775.082. Such term of
22 incarceration shall be served under applicable law or county
23 ordinance governing service of sentences in state or county
24 jurisdiction. This paragraph does not prohibit any other
25 sanction provided by law.

26 Section 6. For the purpose of incorporating the
27 amendment to section 948.06, Florida Statutes, in a reference
28 thereto, subsection (9) of section 948.10, Florida Statutes,
29 is reenacted to read:

30 948.10 Community control programs.--

31 (9) Procedures governing violations of community

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1 control shall be the same as those described in s. 948.06 with
2 respect to probation.

3 Section 7. For the purpose of incorporating the
4 amendment to section 948.06, Florida Statutes, in a reference
5 thereto, section 958.14, Florida Statutes, is reenacted to
6 read:

7 958.14 Violation of probation or community control
8 program.--A violation or alleged violation of probation or the
9 terms of a community control program shall subject the
10 youthful offender to the provisions of s. 948.06. However, no
11 youthful offender shall be committed to the custody of the
12 department for a substantive violation for a period longer
13 than the maximum sentence for the offense for which he or she
14 was found guilty, with credit for time served while
15 incarcerated, or for a technical or nonsubstantive violation
16 for a period longer than 6 years or for a period longer than
17 the maximum sentence for the offense for which he or she was
18 found guilty, whichever is less, with credit for time served
19 while incarcerated.

20 Section 8. This act shall take effect July 1, 2005,
21 and shall apply to offenses committed on or after that date.

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24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete everything before the enacting clause

27

28 and insert:

29 A bill to be entitled
30 An act relating to forcible felony violators;
31 creating the Anti-Murder Act; creating s.

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1 903.0351, F.S.; denying bail or any form of
2 pretrial release to forcible felony violators
3 in certain circumstances; amending s. 948.06,
4 F.S.; providing definitions; providing that
5 forcible felony violators shall remain in
6 custody pending the resolution of probation or
7 community control violation hearings; providing
8 exceptions; providing for hearings to determine
9 the nature and probability of any danger that
10 forcible felony violators pose to the community
11 before release of violators following probation
12 or community control violations; amending s.
13 921.0024, F.S.; revising Criminal Punishment
14 Code computations to provide additional
15 community sanction violation points when a
16 community sanction violation is committed by a
17 forcible felony violator; reenacting ss.
18 948.012(2)(b), 948.10(9), and 958.14, F.S.,
19 relating to split sentence of probation or
20 community control and imprisonment, community
21 control programs, and violation of probation or
22 community control program, respectively, to
23 incorporate the amendment to s. 948.06, F.S.,
24 in references thereto; providing applicability;
25 providing an effective date.

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