

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 608

SPONSOR: Judiciary Committee, Senator Garcia and others

SUBJECT: Forcible Felony Violators

DATE: April 21, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Cannon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute is called the "Anti-Murder Act."

A qualifying offense is any of the following offenses committed on or after July 1, 2005:

- A forcible felony, except for a burglary to an unoccupied dwelling;
- An attempt to commit a forcible felony, except for a burglary to an unoccupied dwelling;
- A lewd and lascivious offense on a victim under the age of 16; or
- Any offense in another jurisdiction that would qualify if committed in this state.

A forcible felony violator is a person who is on probation or community control:

- Related to committing a qualifying offense;
- For any offense committed on or after July 1, 2005, and has committed a qualifying offense; or
- 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 committee substitute prohibits bail for a forcible felony violator until resolution of the violation hearing, unless the violation is based only on a failure to pay costs, fines, or restitution payments. Similarly, this committee substitute prohibits a court from dismissing the probation or community control violation warrant against a forcible felony violator without holding a recorded hearing with both the state and the defendant present. The court must hold the hearing within 30 days of the violator's arrest; however, a failure to do so will not result in any sanction

to the state, nor require the violator to be released prior to hearing. Upon a showing of good faith, the state or the defense may delay the hearing.

If the forcible felony violator is found guilty of a non-monetary term of probation or community control, the court is required to sentence in accordance with the Criminal Punishment Code. If the violation is not a new felony conviction, 12 community sanction violation points are added to the sentencing worksheet. If the violation is based on a new felony conviction, 24 points are added for this and each additional violation based on felony convictions.

Before releasing a forcible felony violator, the court is required to hold a Danger to the Community hearing, as soon as practicable following the violation hearing. If the court finds that a violator does pose a danger, the court is required to sentence up to and including the statutory maximum, without mitigation or downward departure. Where a violator does not pose a danger, the court may sentence pursuant to the Criminal Punishment Code, and consider mitigating factors.

This committee substitute takes effect July 1, 2005, and applies to offenses committed on or after that date.

This committee substitute substantially amends sections 921.0024 and 948.06, Florida Statutes, and creates section 903.0351, Florida Statutes.

II. Present Situation:

Carlie Brucia

On February 1, 2004, a car wash security camera recorded the abduction of 11-year old Carlie Brucia as she walked home from a friend's house in Sarasota, Florida. A suspect was apprehended in part as a result of public response to the dissemination of the video and pictures by the media. Carlie's body was discovered five days after her abduction.

It was quickly learned that the suspect, Joseph P. Smith, was a convicted felon who was on drug offender probation at the time of the crime. Smith has a significant criminal history, and there were indications that he had violated the conditions of his probation by using drugs and failing to meet court-ordered financial obligations. If a court had found that Smith violated his probation in a material respect, it could have revoked his probation and returned him to custody. Therefore, some media portrayed the case as a failure of the system, or of individuals in the system, to properly carry out the duty of protecting the public.

On February 21, 2004, a grand jury indicted Smith on charges of premeditated murder, kidnapping to facilitate the commission of a felony, and sexual battery by a person over 18 years of age upon a person less than 12 years of age. Like all defendants, Smith is legally presumed to be innocent of each charge unless and until the jury finds that the prosecution has proven the charge beyond a reasonable doubt. His trial is scheduled to begin on November 7, 2005.

Probation and Community Control Statistics

As of January 2005, there were 146,075 offenders on some form of community supervision in Florida. This number fluctuates as offenders are added to supervision, are released from prison onto supervision, have their supervision revoked and are sent to prison, or successfully complete their term of supervision.

The following table illustrates the types of supervision and the number of offenders who are on probation or community control, the most common types of community supervision:

Probation (active and active suspense) ¹	121,798
Standard probation	98,803
Drug offender probation	17,805
Sex offender probation	3,247
Administrative probation	1,943
Community Control	10,930
Standard community control	10,640
Sex offender community control	290

Felony probationers and community controllees are under the jurisdiction of the circuit court, and are supervised by the Department of Corrections.

People who are found to have committed crimes can be placed on some form of community supervision, such as probation or community control, by any court having jurisdiction over criminal actions. The statute recommends community supervision for offenders who appear not likely to reoffend and who present the lowest danger to the welfare of society. Generally, this means those offenders whose sentencing guidelines score sheet does not recommend incarceration under the Criminal Punishment Code. There is also the possibility that a person can be diverted to a pretrial intervention program without having to go to trial or enter a plea.

Approximately one-fourth of the offenders on probation or community control committed theft, forgery, or fraud as their most serious offense. Another one-fourth are on community supervision for committing a drug offense. Murder/manslaughter, sexual offenses, robbery, and other violent crimes account for another one-fourth of the community supervision population. Of those placed on probation, 63 percent have no prior community supervision commitments, and 87 percent have never been sentenced to prison. Of those placed on community control, 39 percent have no prior community supervision commitments, and 82 percent have never been sentenced to prison.

Types of Supervision

Probation – Probation is a term or sentence imposed by the court with standard statutory conditions as well as special conditions that may be imposed by the court. Probation lasts for a specific period of time that cannot exceed the maximum sentence for the offense. The first two

¹ Active suspense status indicates that the probationer is likely in jail, possibly with probation violated, and awaiting further court action.

conditions that apply to probation and all forms of supervision require the probationer to report to his or her correctional probation officer and permit the officer to visit the probationer at work, home, or elsewhere. This requirement ensures that contact is maintained throughout the term of probation.

Administrative Probation – A probationer who successfully completes half the term of probation and who represents a low risk of harm to the community may be placed on administrative probation. This is a non-reporting status, but periodic record checks are completed to verify that the offender has not violated the law.

Drug Offender Probation – Drug offender probation includes intensive supervision that emphasizes treatment of the offender. Correctional probation officers with specific training or experience are assigned to supervise drug offender probationers. The caseloads for these officers are limited to 50 offenders. In addition to the standard terms and conditions of probation, drug offender probation includes an individual treatment plan and additional surveillance and random drug testing.

Sex Offender Probation and Sex Offender Community Control – Sex offender probation and sex offender community control requires intensive supervision that emphasizes treatment. As with any form of community control, it may also include electronic monitoring. Like drug offender probation, officers with specific training or experience and with limited case loads are assigned to supervise sex offenders. Each offender in this program has an individualized plan of treatment. The standard terms and conditions of probation or community control apply to persons on sex offender probation, along with additional terms and conditions specified in the statutes. These conditions restrict the sex offender in terms of where he or she may live, work, and visit; with whom he or she may associate; and when he or she may be outside the residence. The statute also requires DNA samples, polygraph testing, and active participation in sex offender treatment.

Community Control – Community control is a community-based punishment alternative to incarceration or regular probation. It includes supervised house arrest, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is intended for felons who are unsuitable for regular probation because of their criminal background or the seriousness of their crime, but for whom the court deems imprisonment to be unnecessary. It may also be appropriate for some felony probation or parole violators who commit technical or misdemeanor violations. A correctional probation officer is statutorily prohibited from having more than 25 community controllees on his or her caseload. Violation of any community control condition may result in revocation by the court and imposition of any sentence which might have been imposed originally.

As with other forms of supervision, all the standard terms and conditions of standard probation apply to persons on community control. In addition to those conditions, the statute permits the court to impose more contact with correctional probation officers, confinement to the residence except during work hours, mandatory public service, and electronic monitoring. Some sex offenders are placed on sex offender community control for heightened supervision, and the additional sex offender conditions discussed in the section on sex offender probation are applied.

Electronic monitoring is often used in community control cases to track the offender's movement or monitor compliance with terms of confinement to the residence. Section 948.11(1)(a), F.S., gives the department the discretion to place community controllees on electronic monitoring. However, the department does not exercise this discretion because of substantial case law that an offender's failure to submit to electronic monitoring ordered by the department cannot be a basis for revocation of community control.

Pretrial Intervention and other Forms of Supervision – Florida operates or oversees a number of different pretrial intervention programs, such as drug courts. The criminal justice system diverts some of the least serious offenders into these programs. These programs have conditions similar to probation, including fees, restitution, public service, and counseling to prevent a return to criminal behavior. If the participant successfully completes the program, the state dismisses the charges and he or she avoids a criminal record. Non-completion of the program results in normal prosecution of the case.

The department also supervises a limited number of post-prison offenders on parole, conditional release, and control release. The provisions and conditions for these programs are outlined in ch. 947, F.S., which deals with the Florida Parole Commission. This type of term of supervision is ordered by the commission rather than the sentencing court. Eligibility for parole was closed in 1983 when the sentencing guidelines were established. Other types of post-prison release supervision include provisional release, supervised community release, conditional pardons, county work release, and addiction recovery supervision.

The conditional release program applies to certain inmates convicted for committing very serious crimes who are released from incarceration prior to completion of their sentence due to application of gain time credits. These inmates must serve the remainder of their full sentence on community supervision. As of December 31, 2004, there were 2,886 offenders on active or active-suspense control release supervision.

Violation of Probation or Community Control

Chapter 948, F.S., includes an extensive list of terms of probation or community control which may be imposed by a sentencing court, as well as mandatory conditions that must be imposed for certain offenses. Under s. 948.06, F.S., whenever there are reasonable grounds to believe that a probationer or community controllee has violated the terms imposed by the court in a material respect, the offender may be arrested without warrant by any law enforcement officer or parole and probation supervisor who is aware of his or her status as a probationer or community controllee. The court may also issue an arrest warrant based upon reasonable cause that the conditions have been violated. In either case, after arrest the offender is returned to the court that imposed the sentence.

Once brought before the court for an alleged violation, the offender is advised of the charge. If the charge is not admitted, the court may commit the offender to jail to await a hearing, release the offender with or without bail, or dismiss the charge. If the offender admits the charge or is determined to have committed the violation after a hearing, the court may revoke, modify, or continue the probation or community control. If probation or community control is revoked, the court must adjudge the offender guilty of the offense for which he or she was on community

supervision, and may impose any sentence which it might have originally imposed before placing the offender on probation or into community control.

Definitions

A forcible felony is defined as:

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.²

An aggravated stalking occurs when someone:

- Willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person, and makes a credible threat to cause reasonable fear of death or bodily injury;
- After receiving an injunction or other court-imposed prohibition of conduct toward another person, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks that same person; or
- Willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under the age of 16.³

A sexual battery is committed where there is oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, without the consent of that person.⁴

III. Effect of Proposed Changes:

This committee substitute is called the “Anti-Murder Act.”

A qualifying offense is defined as any of the following offenses committed on or after July 1, 2005:

- A forcible felony, except for a burglary to an unoccupied dwelling;
- An attempt to commit a forcible felony, except for a burglary to an unoccupied dwelling;
- A lewd and lascivious offense on a victim under the age of 16; or
- Any offense in another jurisdiction that would qualify if committed in this state.

A forcible felony violator is defined as a person who is on probation or community control:

- Related to committing a qualifying offense;

² s. 776.08, F.S.

³ s. 784.048(3) to (5), F.S.

⁴ s. 794.011(1)(h), F.S.

- For any offense committed on or after July 1, 2005, and has committed a qualifying offense; or
- 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 committee substitute prohibits a forcible felony violator from being granted bail or pretrial release before the probation or community control violation hearing is resolved, unless the violation is only based on a failure to pay costs, fines, or restitution payments. Similarly, this committee substitute prohibits a court from dismissing the probation or community control violation warrant against a forcible felony violator without holding a recorded hearing with both the state and the defendant present. The court must hold the hearing within 30 days of the violator's arrest; however, a failure to do so will not result in any sanction to the state, nor require the violator to be released prior to hearing. Upon a showing of good faith, the state or the defense may delay the hearing.

If the court determines that a forcible felony violator has violated any non-monetary term of probation or community control, the court is required to revoke probation or community control, adjudicate the defendant guilty, and sentence the defendant in accordance with the Criminal Punishment Code. If the violation is committed by a forcible felony violator but is not a new felony conviction, 12 community sanction violation points are added to the sentencing worksheet. If the violation is based on a new felony conviction, 24 points are added for the violation and for each additional violation based on felony convictions.

Before the court is authorized to release a forcible felony violator from custody or impose a non-state prison sanction for violation of probation or community control, the court is required to hold a Danger to the Community hearing, as soon as practicable following the violation hearing, and is authorized to conduct the Danger to the Community hearing immediately after adjudication of the violation. Factors to be considered include the nature and circumstances of the violation and new offenses, past and present conduct, family ties, length of residence in the community, employment history, and mental condition.

If the court finds, based on a preponderance of the evidence, that a forcible felony violator poses a danger to the community, the court is required to sentence the violator up to and including the statutory maximum, without mitigation or downward departure. Where it is determined that a violator does not pose a danger to the community, the court may order a sentence pursuant to the Criminal Punishment Code, and consider mitigating factors.

This bill takes effect July 1, 2005, and applies to offenses committed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Due to the requirement of "no bail" in this bill, Miami-Dade County estimates a fiscal impact of \$2.5 million annually in jail costs.

Hillsborough County estimates an annual cost of \$959,910.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Persons accused of crimes generally have a right to bail, based on the constitutional presumption of innocence. Article I, Section 14 of the state constitution provides:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Section 907.041(1), F.S., provides that it is state policy that persons who pose a threat to community safety be detained upon arrest. However, a presumption exists in favor of release on non-monetary conditions for any person granted pre-trial release unless that person is charged with an enumerated dangerous crime.⁵

Additionally, the right to bail does not automatically extend to persons who violate probation. As stated in *McCarthy v. Jenne*, “Bail pending revocation of a violation of probation is not a guaranteed constitutional right.”⁶ Under s. 948.06(2)(c), F.S., where the probationer does not admit the violation, the court may order that the probationer be held without bail until further hearing.

A challenge may potentially be made on the basis that this committee substitute directs, rather than authorizes the court to hold probationers without bail. As held in *Barts v. State*,⁷ however, where a denial of bail can be shown to be a legitimate exercise of the Legislature’s authority to punish criminal offenders, there is no violation of separation of powers.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

⁵ s. 907.041(3) and (4), F.S.

⁶ 861 So.2d 99 (Fla. 4th DCA 2003).

⁷ 447 So.2d 410, 411 (Fla. 1st DCA 1984).

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Economic Impact Conference estimated that implementation of this committee substitute will result in the following costs:

Table 1 Fiscal Impact of CS/SB 608

Fiscal Impact	Projected Additional Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2005-2006	293	293	\$2,680,511	\$65,425,360	\$68,105,871	\$68,105,871
2006-2007	1,672	1,379	\$18,263,693	\$79,940,679	\$98,204,372	\$166,310,242
2007-2008	3,655	1,983	\$50,404,074	\$77,931,162	\$128,335,236	\$294,645,478
2008-2009	5,554	1,899	\$88,880,664	\$67,476,708	\$156,357,372	\$451,002,850
2009-2010	7,166	1,612	\$125,463,720	\$53,475,000	\$178,938,720	\$629,941,570
Total	7,166	7,166	\$285,692,661	\$344,248,909	\$629,941,570	\$629,941,570

Source: Office of Economic and Demographic Research

These figures are based on assumptions that judges will find offenders to pose a danger to the community 75 percent of the time, and that these provisions apply only to offenses committed on or after July 1, 2005.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
