

By Senator Garcia

40-549-05

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A bill to be entitled

An act relating to offenders who have committed forcible felonies; creating s. 903.0351, F.S.; prohibiting a court from admitting an offender who has committed a forcible felony to bail or any other form of pretrial release under specified circumstances; providing certain exceptions; amending s. 921.0024, F.S.; directing that 24 community sanction violation points be added to an offender's Criminal Punishment Code worksheet for a violation involving a forcible felony; amending s. 948.06, F.S.; defining the term "offender who has committed a forcible felony"; prohibiting a court from releasing an offender who is charged with committing a nonmonetary violation of probation or community control; requiring the offender to remain in custody until resolution of the charge of violating probation or community control; requiring a court to hold a hearing to determine whether the offender poses a danger to the community; directing the court to assess community violation sanction points if the offender is a danger to the community; providing an effective date.

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

Section 1. Section 903.0351, Florida Statutes, is created to read:

1 903.0351 Bail or pretrial release prohibited for
2 certain offenders.--If an offender who has previously
3 committed a forcible felony or an attempted forcible felony,
4 as defined in s. 776.08, is charged or arrested for a
5 violation of probation or community control, the court may not
6 admit the offender to bail or any other form of pretrial
7 release until completion of the probation or community control
8 hearing arising out of the charge or arrest. The court may
9 admit the offender to bail or other form of pretrial release
10 if the charge or arrest is based solely on the offender's
11 failure to pay costs or fines or to make restitution payments.

12 Section 2. Paragraph (b) of subsection (1) of section
13 921.0024, Florida Statutes, is amended to read:

14 921.0024 Criminal Punishment Code; worksheet
15 computations; scoresheets.--

16 (1)

17 (b) WORKSHEET KEY:

18
19 Legal status points are assessed when any form of legal status
20 existed at the time the offender committed an offense before
21 the court for sentencing. Four (4) sentence points are
22 assessed for an offender's legal status.

23
24 Community sanction violation points are assessed when a
25 community sanction violation is before the court for
26 sentencing. Six (6) sentence points are assessed for each
27 community sanction violation, and each successive community
28 sanction violation; however, if the community sanction
29 violation includes a new felony conviction before the
30 sentencing court, twelve (12) community sanction violation
31 points are assessed for ~~the~~ such violation, and for each

1 successive community sanction violation involving a new felony
2 conviction. If the community sanction violation is committed
3 by a violator who has committed a forcible felony, as defined
4 in s. 948.06, twenty-four (24) community sanction violation
5 points are assessed for the violation, and for each successive
6 community sanction violation involving a new felony
7 conviction. Multiple counts of community sanction violations
8 before the sentencing court ~~may shall~~ not be a basis for
9 multiplying the assessment of community sanction violation
10 points.

11

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

24

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

1 entered a plea of nolo contendere or guilty or has been found
2 guilty; or a felony in another jurisdiction which is a capital
3 felony in that jurisdiction, or would be a capital felony if
4 the offense were committed in this state.

5
6 Possession of a firearm, semiautomatic firearm, or machine
7 gun: If the offender is convicted of committing or attempting
8 to commit any felony other than those enumerated in s.
9 775.087(2) while having in his or her possession: a firearm as
10 defined in s. 790.001(6), an additional 18 sentence points are
11 assessed; or if the offender is convicted of committing or
12 attempting to commit any felony other than those enumerated in
13 s. 775.087(3) while having in his or her possession a
14 semiautomatic firearm as defined in s. 775.087(3) or a machine
15 gun as defined in s. 790.001(9), an additional 25 sentence
16 points are assessed.

17
18 Sentencing multipliers:

19
20 Drug trafficking: If the primary offense is drug trafficking
21 under s. 893.135, the subtotal sentence points are multiplied,
22 at the discretion of the court, for a level 7 or level 8
23 offense, by 1.5. The state attorney may move the sentencing
24 court to reduce or suspend the sentence of a person convicted
25 of a level 7 or level 8 offense, if the offender provides
26 substantial assistance as described in s. 893.135(4).

27
28 Law enforcement protection: If the primary offense is a
29 violation of the Law Enforcement Protection Act under s.
30 775.0823(2), the subtotal sentence points are multiplied by
31 2.5. If the primary offense is a violation of s. 775.0823(3),

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

6
7 Grand theft of a motor vehicle: If the primary offense is
8 grand theft of the third degree involving a motor vehicle and
9 in the offender's prior record, there are three or more grand
10 thefts of the third degree involving a motor vehicle, the
11 subtotal sentence points are multiplied by 1.5.

12
13 Offense related to a criminal street gang: If the offender is
14 convicted of the primary offense and committed that offense
15 for the purpose of benefiting, promoting, or furthering the
16 interests of a criminal street gang as prohibited under s.
17 874.04, the subtotal sentence points are multiplied by 1.5.

18
19 Domestic violence in the presence of a child: If the offender
20 is convicted of the primary offense and the primary offense is
21 a crime of domestic violence, as defined in s. 741.28, which
22 was committed in the presence of a child under 16 years of age
23 who is a family or household member as defined in s. 741.28(3)
24 with the victim or perpetrator, the subtotal sentence points
25 are multiplied by 1.5.

26 Section 3. Subsection (8) is added to section 948.06,
27 Florida Statutes, to read:

28 948.06 Violation of probation or community control;
29 revocation; modification; continuance; failure to pay
30 restitution or cost of supervision.--

31

1 (8)(a) As used in this subsection, the term "offender
2 who has committed a forcible felony" or "offender" means a
3 person who:
4 1. Is presently on probation or community control for:
5 a. A forcible felony as defined in s. 776.08, or an
6 attempted forcible felony;
7 b. Aggravated stalking as defined in s. 784.048(3);
8 c. Any offense under chapter 794 relating to sexual
9 battery; or
10 d. Any offense under s. 800.04; or
11 2. Has previously been convicted, regardless of a
12 withholding of adjudication or suspended entry of sentence,
13 of:
14 a. A forcible felony as defined in s. 776.08, or an
15 attempted forcible felony;
16 b. Aggravated stalking as defined in s. 784.048(3);
17 c. Any offense under chapter 794 relating to sexual
18 battery; or
19 d. Any offense under s. 800.04; or
20 3. Is charged with a violation of probation or
21 community control because of an allegation that the offender
22 committed:
23 a. A forcible felony as defined in s. 776.08, or an
24 attempted forcible felony;
25 b. Aggravated stalking as defined in s. 784.048(3);
26 c. Any offense under chapter 794 relating to sexual
27 battery; or
28 d. Any offense under s. 800.04.
29 (b)1. A court may not release an offender who has
30 committed a forcible felony if the offender is charged with
31 any nonmonetary violation of probation or community control.

1 2. The offender must remain in custody pending
2 resolution of the charge of a violation of probation or
3 community control.

4 3. The court may not dismiss the warrant alleging a
5 violation of probation or community control which is pending
6 against the offender without a hearing at which both the state
7 and the offender are represented.

8 4. If the court finds that the offender has violated
9 any nonmonetary term of probation or community control, before
10 any sentence is imposed, the court must determine if the
11 offender poses a danger to the community. If the court
12 determines, by a preponderance of evidence, that the offender
13 poses a danger to the community, the court shall assess 24
14 community sanction violation points against the violator as
15 provided in s. 921.0024.

16 5. If the court finds, or the state stipulates, that
17 releasing the offender does not pose a danger to the
18 community, the court may sentence the offender to any
19 permissible sentence under the Criminal Punishment Code, up to
20 and including the statutory maximum.

21 Section 4. This act shall take effect July 1, 2005.

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24 SENATE SUMMARY

25 Directs a court not to admit a violator who has committed
26 a forcible felony to bail or any other form of pretrial
27 release under specified circumstances. Provides certain
28 exceptions. Directs a court to add community sanction
29 violation points to a violator's Criminal Punishment Code
30 worksheet under certain circumstances. Directs a court
31 not to release a violator who is charged with committing
a nonmonetary violation of probation or community
control. Requires that the violator remain in custody
until resolution of the probation or community violation
charge. Requires a court to hold a hearing to determine
if the violator poses a danger to the community. Directs
a court to assess community violation sanction points if
the violator is a danger to the community.