

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

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

5 903.0351 Bail or pretrial release not permitted for
6 forcible felony violators.--A forcible felony violator as
7 defined in s. 948.06 shall not be granted bail or any form of
8 pretrial release prior to the resolution of the probation or
9 community control violation hearing, unless the violation
10 charge or arrest is based solely on failure to pay costs,
11 finest, or restitution payments.

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

15 948.06 Violation of probation or community control;
16 revocation; modification; continuance; failure to pay
17 restitution or cost of supervision.--

18 (4) Notwithstanding any other provision of this
19 section, a probationer or an offender in community control who
20 is arrested for violating his or her probation or community
21 control in a material respect may be taken before the court in
22 the county or circuit in which the probationer or offender was
23 arrested. That court shall advise him or her of such charge of
24 a violation and, if such charge is admitted, shall cause him
25 or her to be brought before the court which granted the
26 probation or community control. If such violation is not
27 admitted by the probationer or offender, the court may commit
28 him or her or release him or her with or without bail to await
29 further hearing. The court, as soon as is practicable, shall
30 give the probationer or offender an opportunity to be fully
31 heard on his or her behalf in person or by counsel. After such

1 hearing, the court shall make findings of fact and forward the
2 findings to the court which granted the probation or community
3 control and to the probationer or offender or his or her
4 attorney. The findings of fact by the hearing court are
5 binding on the court which granted the probation or community
6 control. Upon the probationer or offender being brought before
7 it, the court which granted the probation or community control
8 may revoke, modify, or continue the probation or community
9 control or may place the probationer into community control as
10 provided in this section. However, if any violation other than
11 a failure to pay costs, fines, or restitution payments is
12 alleged to have been committed by a forcible felony violator,
13 as defined in subsection (8), the probationer or offender may
14 not be released and may not be admitted to bail but shall be
15 brought before the court that granted the probation or
16 community control.

17 (8)(a) In addition to the provisions of subsections
18 (1)-(7), this subsection provides further requirements
19 regarding a probationer or offender in community control who
20 is a forcible felony violator. The provisions of this
21 subsection shall control over any conflicting provision in
22 subsections (1)-(7).

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

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

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

28 b. Is on probation or community control for any
29 offense committed on or after July 1, 2005, and has committed
30 a qualifying offense; or
31

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

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

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

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

11 c. Any offense under s. 800.04; or

12 d. Any offense in another jurisdiction that would be
13 an offense described in sub-subparagraphs a.-c. if that
14 offense had been committed in this state.

15 (c) In the case of a violation arising from any ground
16 other than a failure to pay costs, fines, or restitution
17 payments, a forcible felony violator shall remain in custody
18 pending the resolution of the probation or community control
19 violation. The court may not dismiss the probation or
20 community control violation warrant pending against a forcible
21 felony violator without holding a recorded hearing at which
22 both the state and the violator are represented.

23 (d) If the court determines that a forcible felony
24 violator has violated any nonmonetary term of probation or
25 community control, the court must revoke the probation or
26 community control, must adjudge the probationer or offender
27 guilty of the offense charged and proven or admitted, and
28 shall sentence the probationer or offender as provided in s.
29 921.0024.

30 (e) If the court imposes a prison sentence, this
31 paragraph does not apply. Before the court may release a

1 forcible felony violator from custody or impose any nonstate
2 prison sanction for violation of probation or community
3 control, the court must hold a Danger to the Community hearing
4 to determine the danger that the forcible felony violator
5 poses to the community. The court must hold this hearing as
6 soon as practicable following the violation or probation or
7 community control hearing and may conduct the Danger to the
8 Community hearing immediately after adjudicating the
9 probationer or offender guilty of the violation.

10 1. If the court determines, by a preponderance of the
11 evidence, that a forcible felony violator poses a danger to
12 the community, the court shall sentence the violator pursuant
13 to s. 921.0024, up to and including the statutory maximum, and
14 shall neither consider the mitigating circumstances in s.
15 921.0026 nor otherwise depart downward from the sentencing
16 guidelines.

17 2. In the case of a violation arising from any ground
18 other than failure to pay costs, fines, or restitution
19 payments, a forcible felony violator shall remain in custody
20 pending the resolution of the probation or community control
21 violation hearing, to be held within 30 days after the
22 violator's arrest. Failure to hold the hearing within 30 days
23 shall not result in any sanction to the state, nor trigger any
24 right for the forcible felony offender to be released prior to
25 the violation hearing. Upon a good faith showing of need, the
26 state or the defense may delay the hearing. If the court
27 finds, or the state stipulates, that the release of the
28 forcible felony violator does not pose a danger to the
29 community, the court may sentence the forcible felony violator
30 according to s. 921.0024 and consider any mitigating
31 circumstances provided in s. 921.0026. The court must enter a

1 written order to make a finding that the forcible felony
2 violator does not pose a danger to the community.

3 3. In determining the danger posed by the defendant's
4 release, the court may consider the nature and circumstances
5 of the violation and any new offenses charged; the defendant's
6 past and present conduct, including convictions of crimes; any
7 record of arrests without conviction for crimes involving
8 violence or sexual crimes; any other evidence of allegations
9 of unlawful sexual conduct or the use of violence by the
10 defendant; the defendant's family ties, length of residence in
11 the community, employment history, and mental condition; the
12 defendant's amenability to nonincarcerative sanctions based on
13 his or her history and conduct during the probation or
14 community control supervision from which the violation hearing
15 arises and any other previous supervisions, including
16 disciplinary records of previous incarcerations; the
17 likelihood that the defendant will engage again in a criminal
18 course of conduct; the weight of the evidence against the
19 defendant; and any other facts the court considers relevant.

20 Section 4. Paragraph (b) of subsection (1) of section
21 921.0024, Florida Statutes, is amended to read:

22 921.0024 Criminal Punishment Code; worksheet
23 computations; scoresheets.--

24 (1)

25 (b) WORKSHEET KEY:

26
27 Legal status points are assessed when any form of legal status
28 existed at the time the offender committed an offense before
29 the court for sentencing. Four (4) sentence points are
30 assessed for an offender's legal status.
31

1 Community sanction violation points are assessed when a
2 community sanction violation is before the court for
3 sentencing. Six (6) sentence points are assessed for each
4 community sanction violation, and each successive community
5 sanction violation, unless any of the following apply:

6 ~~however,~~

7 1. If the community sanction violation includes a new
8 felony conviction before the sentencing court, twelve (12)
9 community sanction violation points are assessed for ~~the~~ ~~such~~
10 violation, and for each successive community sanction
11 violation involving a new felony conviction.

12 2. If the community sanction violation is committed by
13 a forcible felony violator as defined in s. 948.06(8)(b), but
14 does not include a new felony conviction, twelve (12)
15 community sanction violation points are assessed for the
16 violation, and for each successive community sanction
17 violation not involving a new felony conviction.

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

24
25 Multiple counts of community sanction violations before the
26 sentencing court shall not be a basis for multiplying the
27 assessment of community sanction violation points.

28
29 Prior serious felony points: If the offender has a primary
30 offense or any additional offense ranked in level 8, level 9,
31 or level 10, and one or more prior serious felonies, a single

1 assessment of 30 points shall be added. For purposes of this
2 section, a prior serious felony is an offense in the
3 offender's prior record that is ranked in level 8, level 9, or
4 level 10 under s. 921.0022 or s. 921.0023 and for which the
5 offender is serving a sentence of confinement, supervision, or
6 other sanction or for which the offender's date of release
7 from confinement, supervision, or other sanction, whichever is
8 later, is within 3 years before the date the primary offense
9 or any additional offense was committed.

10
11 Prior capital felony points: If the offender has one or more
12 prior capital felonies in the offender's criminal record,
13 points shall be added to the subtotal sentence points of the
14 offender equal to twice the number of points the offender
15 receives for the primary offense and any additional offense. A
16 prior capital felony in the offender's criminal record is a
17 previous capital felony offense for which the offender has
18 entered a plea of nolo contendere or guilty or has been found
19 guilty; or a felony in another jurisdiction which is a capital
20 felony in that jurisdiction, or would be a capital felony if
21 the offense were committed in this state.

22
23 Possession of a firearm, semiautomatic firearm, or machine
24 gun: If the offender is convicted of committing or attempting
25 to commit any felony other than those enumerated in s.
26 775.087(2) while having in his or her possession: a firearm as
27 defined in s. 790.001(6), an additional 18 sentence points are
28 assessed; or if the offender is convicted of committing or
29 attempting to commit any felony other than those enumerated in
30 s. 775.087(3) while having in his or her possession a
31 semiautomatic firearm as defined in s. 775.087(3) or a machine

1 | gun as defined in s. 790.001(9), an additional 25 sentence
2 | points are assessed.
3 |
4 | Sentencing multipliers:
5 |
6 | Drug trafficking: If the primary offense is drug trafficking
7 | under s. 893.135, the subtotal sentence points are multiplied,
8 | at the discretion of the court, for a level 7 or level 8
9 | offense, by 1.5. The state attorney may move the sentencing
10 | court to reduce or suspend the sentence of a person convicted
11 | of a level 7 or level 8 offense, if the offender provides
12 | substantial assistance as described in s. 893.135(4).
13 |
14 | Law enforcement protection: If the primary offense is a
15 | violation of the Law Enforcement Protection Act under s.
16 | 775.0823(2), the subtotal sentence points are multiplied by
17 | 2.5. If the primary offense is a violation of s. 775.0823(3),
18 | (4), (5), (6), (7), or (8), the subtotal sentence points are
19 | multiplied by 2.0. If the primary offense is a violation of s.
20 | 784.07(3) or s. 775.0875(1), or of the Law Enforcement
21 | Protection Act under s. 775.0823(9) or (10), the subtotal
22 | sentence points are multiplied by 1.5.
23 |
24 | Grand theft of a motor vehicle: If the primary offense is
25 | grand theft of the third degree involving a motor vehicle and
26 | in the offender's prior record, there are three or more grand
27 | thefts of the third degree involving a motor vehicle, the
28 | subtotal sentence points are multiplied by 1.5.
29 |
30 | Offense related to a criminal street gang: If the offender is
31 | convicted of the primary offense and committed that offense

1 for the purpose of benefiting, promoting, or furthering the
2 interests of a criminal street gang as prohibited under s.
3 874.04, the subtotal sentence points are multiplied by 1.5.

4
5 Domestic violence in the presence of a child: If the offender
6 is convicted of the primary offense and the primary offense is
7 a crime of domestic violence, as defined in s. 741.28, which
8 was committed in the presence of a child under 16 years of age
9 who is a family or household member as defined in s. 741.28(3)
10 with the victim or perpetrator, the subtotal sentence points
11 are multiplied by 1.5.

12 Section 5. For the purpose of incorporating the
13 amendment to section 948.06, Florida Statutes, in a reference
14 thereto, paragraph (b) of subsection (2) of section 948.012,
15 Florida Statutes, is reenacted to read:

16 948.012 Split sentence of probation or community
17 control and imprisonment.--

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

22 (b) If the offender does not meet the terms and
23 conditions of probation or community control, the court may
24 revoke, modify, or continue the probation or community control
25 as provided in s. 948.06. If the probation or community
26 control is revoked, the court may impose any sentence that it
27 could have imposed at the time the offender was placed on
28 probation or community control. The court may not provide
29 credit for time served for any portion of a probation or
30 community control term toward a subsequent term of probation
31 or community control. However, the court may not impose a

1 subsequent term of probation or community control which, when
2 combined with any amount of time served on preceding terms of
3 probation or community control for offenses pending before the
4 court for sentencing, would exceed the maximum penalty
5 allowable as provided in s. 775.082. Such term of
6 incarceration shall be served under applicable law or county
7 ordinance governing service of sentences in state or county
8 jurisdiction. This paragraph does not prohibit any other
9 sanction provided by law.

10 Section 6. For the purpose of incorporating the
11 amendment to section 948.06, Florida Statutes, in a reference
12 thereto, subsection (9) of section 948.10, Florida Statutes,
13 is reenacted to read:

14 948.10 Community control programs.--

15 (9) Procedures governing violations of community
16 control shall be the same as those described in s. 948.06 with
17 respect to probation.

18 Section 7. For the purpose of incorporating the
19 amendment to section 948.06, Florida Statutes, in a reference
20 thereto, section 958.14, Florida Statutes, is reenacted to
21 read:

22 958.14 Violation of probation or community control
23 program.--A violation or alleged violation of probation or the
24 terms of a community control program shall subject the
25 youthful offender to the provisions of s. 948.06. However, no
26 youthful offender shall be committed to the custody of the
27 department for a substantive violation for a period longer
28 than the maximum sentence for the offense for which he or she
29 was found guilty, with credit for time served while
30 incarcerated, or for a technical or nonsubstantive violation
31 for a period longer than 6 years or for a period longer than

1 | the maximum sentence for the offense for which he or she was
2 | found guilty, whichever is less, with credit for time served
3 | while incarcerated.

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

6 |

7 | STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 | COMMITTEE SUBSTITUTE FOR
9 | Senate Bill 608

9 |

10 | This committee substitute makes the following changes:

- 11 | -- Removes the offense of burglary of an unoccupied dwelling
12 | as a qualifying offense;
- 13 | -- Reduces sentencing-guidelines scoring for a community
14 | sanction violation that is not based on a new felony
15 | conviction from 24 points to 12 points;
- 16 | -- Provides for prospective application, so that these
17 | provisions apply to offenses committed on or after July
18 | 1, 2005; and
- 19 | -- Provides that the Dangerous to the Community hearing will
20 | be held within 30 days after arrest, but that the hearing
21 | may be extended upon a good faith showing.

19 |

20 |

21 |

22 |

23 |

24 |

25 |

26 |

27 |

28 |

29 |

30 |

31 |