

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 25 Violent Felony Offenders  
**SPONSOR(S):** Negron and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2622

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Appropriations Committee	6 Y, 0 N	DeBeaugrine	DeBeaugrine
2) Criminal Justice Committee	5 Y, 0 N	Cunningham	Kramer
3) Fiscal Council	23 Y, 0 N	DeBeaugrine	Kelly
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

This bill creates a class of persons who violate the conditions of their probation or community control, known as a "violent felony offender of special concern." "Violent felony offenders of special concern" are persons who commit violent crimes, and whose violation of probation or community control is not for a failure to pay money.

A "violent felony offender of special concern" must be held without bail until the violation is resolved.

The Criminal Punishment Code provides a mathematical formula that determines the minimum sentence that a criminal offender must serve. Under current law, a probation violator is assessed an additional 12 points for a felony violation, or 6 points for any other violation. This bill increases those points for violent felony offenders of special concern by 50%.

On March 21, 2006 the Criminal Justice Estimating Conference determined that the bill would increase the inmate population by 1,336 inmates by the end of FY 2010-11. Please see section II, the fiscal and economic impact section of this analysis, for further information.

## 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.<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> Section 948.001(5), F.S.

<sup>2</sup> 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 violent felony offender of special concern arrested for violation of probation or community control may not be granted bail prior to the resolution of the probation or community control violation hearing 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 violent felony offenders of special concern 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 violent felony offenders of special concern. The bill defines "violent felony offenders of special concern" as a person who is:

- On probation or community control related to the commission of a qualifying offense committed on or after July 1, 2006,
- On probation or community control for any offense committed on or after July 1, 2006, and who then commits a qualifying offense, or
- On probation or community control for any offense committed on or after July 1, 2006, and is found to have violated that probation or community control by committing a qualifying offense.

- On probation or community control and has previously been found by a court to be a habitual violent felony offender pursuant to s. 775.084(1)(b), F.S., and has committed a qualifying offense on or after July 1, 2006.
- On probation or community control and has previously been found by a court to be a three-time violent felony offender pursuant to s. 775.084(1)(c), F.S., and has committed a qualifying offense on or after July 1, 2006.
- Probation or community control and has previously been found by a court to be a sexual predator pursuant to s. 775.21, F.S., and has committed a qualifying offense on or after July 1, 2006.

This bill provides that commission of any listed offense on or after July 1, 2006 is a “qualifying offense.” The listed offenses are:

- Kidnapping or attempted kidnapping under s. 787.01, F.S., false imprisonment of a child under the age of 13 under s. 787.02(3), F.S., or luring or enticing a child under s. 787.025, F.S..
- Murder or attempted murder under s. 782.04, F.S., attempted felony murder under s. 782.051, F.S., or manslaughter under s. 782.07, F.S.
- Aggravated battery or attempted aggravated battery under s. 784.045, F.S.
- Sexual battery or attempted sexual battery under s. 794.011(2), (3), or (4), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious batter under s. 800.04, F.S., or lewd or lascivious molestation under s. 800.04(5)(b), F.S.
- Robbery or attempted robbery under s. 812.13, F.S., carjacking under s. 812.133, F.S., or home invasion robbery under s. 812.135, F.S.
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025, F.S.
- Sexual performance of a child or attempted sexual performance of a child under s. 827.071, F.S.
- Computer pornography under s. 847.0135(2) or (3), F.S., transmission of child pornography under s. 847.0137, F.S., or selling or buying of minors under s. 847.0145, F.S.
- Poisoning food or water under s. 859.01, F.S.
- Abuse of a dead human body under s. 872.06, F.S.
- Arson or attempted arson under s. 806.01(1), F.S.
- Aggravated assault under s. 784.021, F.S.
- Aggravated stalking under s. 784.048(3), (4), (5), or (7), F.S.
- Aircraft piracy under s. 860.16, F.S.
- Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4), F.S.
- Treason under s. 876.32, 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 violent felony offender of special concern, 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 violent felony offender of special concern has violated any nonmonetary terms of probation or community control, the court must decide whether to revoke the probation or community control. If the court determines by a preponderance of the evidence that a violent felony offender of special concern poses a danger to the community, the court shall revoke probation or community control and shall sentence the offender up to the statutory maximum under the Criminal Sentencing

Code, s. 921.0024, F.S. The court is allowed to consider a number of factors in determining the danger to the community posed by the offender's release. The court must enter a written order in support of its finding in determining whether the offender poses a danger to the community.

This bill amends s. 921.0024, F.S., to modify the formula for determining the Total Sentence Points under the Criminal Punishment Code. A violent felony offender of special concern violator is assessed 9 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 18 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 violent felony offenders of special concern.

**Section 3.** Amends s. 948.06, F.S., defining violent felony offender of special concern and requiring a violation of probation hearing.

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

**Sections 5, 6 and 7.** Republishes sections of law that may be affected by the changes made in the bill.

**Section 8.** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On March 21, 2006 the Criminal Justice Estimating Conference determined that the bill would result in 32 additional inmates for FY 2006-07, increasing to 251 additional inmates by the end of FY 2007-08. The 32 additional inmates would result in additional costs of \$305,184 for operations. Construction costs are estimated by the conference at \$40,273 per bed which would result in construction costs of \$10.1 million to cover the additional inmates expected to be incarcerated in FY 2006-07 and FY 2007-08.

The current bed construction phase-in funded in the House proposed General Appropriation Act provides sufficient additional inmates expected to result from passage of this bill through the three year planning cycle that ends June 30, 2009.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill requires a violent felony offender of special concern to be detained without bail pending the final hearing on the violation. As such, the violator will be held in a county jail at

county expense. The impact could be significant, but it should be noted that offenders who meet the definition of a violent felony offender of special concern are more serious offenders who may not be as likely to be granted bail under existing law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill could have a significant fiscal impact on counties but would appear to be exempt from the provisions of Article VII, Section 18 (a) of the state constitution because it amends a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES