

1                                   A bill to be entitled  
 2           An act relating to violent felony offenders; providing a  
 3           short title; creating s. 903.0351, F.S.; prohibiting bail  
 4           or other pretrial release for specified violent felony  
 5           offenders of special concern without a hearing; amending  
 6           s. 948.06, F.S.; providing definitions; providing that  
 7           certain alleged violations of probation or community  
 8           control by violent felony offenders of special concern  
 9           require hearings and require the alleged offenders to  
 10          remain in custody pending hearing; providing requirements  
 11          for such hearings; amending s. 921.0024, F.S.; revising  
 12          Criminal Punishment Code worksheet computations to provide  
 13          additional community sanction violation points for certain  
 14          community sanction violations committed by violent felony  
 15          offenders of special concern; reenacting ss.  
 16          948.012(2)(b), 948.10(9), and 958.14, F.S., relating to  
 17          split sentence of probation or community control and  
 18          imprisonment, community control programs, and violation of  
 19          probation or community control, respectively, to  
 20          incorporate the amendment to s. 948.06, F.S., in  
 21          references thereto; providing an effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

24  
 25           Section 1.   This act may be cited as the "Anti-Murder Act."  
 26           Section 2.   Section 903.0351, Florida Statutes, is created  
 27   to read:

28           903.0351 Violent felony offenders of special concern;  
 29 pretrial release hearing required.--A violent felony offender of  
 30 special concern, as defined in s. 948.06, who has been arrested  
 31 for an alleged violation of probation or community control shall  
 32 not be granted bail or any other form of pretrial release prior  
 33 to the resolution of the probation or community control  
 34 violation hearing, unless the violation charge or arrest is  
 35 based solely on failure to pay costs, fines, or restitution  
 36 payments.

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

40           948.06 Violation of probation or community control;  
 41 revocation; modification; continuance; failure to pay  
 42 restitution or cost of supervision.--

43           (4) Notwithstanding any other provision of this section, a  
 44 probationer or an offender in community control who is arrested  
 45 for violating his or her probation or community control in a  
 46 material respect may be taken before the court in the county or  
 47 circuit in which the probationer or offender was arrested. That  
 48 court shall advise him or her of such charge of a violation and,  
 49 if such charge is admitted, shall cause him or her to be brought  
 50 before the court which granted the probation or community  
 51 control. If such violation is not admitted by the probationer or  
 52 offender, the court may commit him or her or release him or her  
 53 with or without bail to await further hearing. However, if the  
 54 probationer or offender is under supervision for any criminal  
 55 offense proscribed in chapter 794, s. 800.04(4), (5), (6), s.

56 827.071, or s. 847.0145, or is a registered sexual predator or a  
57 registered sexual offender, or is under supervision for a  
58 criminal offense for which he or she would meet the registration  
59 criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the  
60 effective date of those sections, the court must make a finding  
61 that the probationer or offender is not a danger to the public  
62 prior to release with or without bail. In determining the danger  
63 posed by the offender's or probationer's release, the court may  
64 consider the nature and circumstances of the violation and any  
65 new offenses charged; the offender's or probationer's past and  
66 present conduct, including convictions of crimes; any record of  
67 arrests without conviction for crimes involving violence or  
68 sexual crimes; any other evidence of allegations of unlawful  
69 sexual conduct or the use of violence by the offender or  
70 probationer; the offender's or probationer's family ties, length  
71 of residence in the community, employment history, and mental  
72 condition; his or her history and conduct during the probation  
73 or community control supervision from which the violation arises  
74 and any other previous supervisions, including disciplinary  
75 records of previous incarcerations; the likelihood that the  
76 offender or probationer will engage again in a criminal course  
77 of conduct; the weight of the evidence against the offender or  
78 probationer; and any other facts the court considers relevant.  
79 The court, as soon as is practicable, shall give the probationer  
80 or offender an opportunity to be fully heard on his or her  
81 behalf in person or by counsel. After such hearing, the court  
82 shall make findings of fact and forward the findings to the  
83 court which granted the probation or community control and to

84 the probationer or offender or his or her attorney. The findings  
85 of fact by the hearing court are binding on the court which  
86 granted the probation or community control. Upon the probationer  
87 or offender being brought before it, the court which granted the  
88 probation or community control may revoke, modify, or continue  
89 the probation or community control or may place the probationer  
90 into community control as provided in this section. However, if  
91 any violation other than a failure to pay costs, fines, or  
92 restitution payments is alleged to have been committed by a  
93 violent felony offender of special concern, as defined in  
94 subsection (8), the probationer or offender shall not be  
95 released and shall not be admitted to bail, but shall be brought  
96 before the court that granted the probation or community  
97 control.

98 (8) (a) In addition to complying with the provisions of  
99 subsections (1)-(7), a probationer or offender in community  
100 control who is a violent felony offender of special concern  
101 shall comply with this subsection. The provisions of this  
102 subsection shall control over any conflicting provisions in  
103 subsections (1)-(7).

104 (b) For purposes of this subsection and ss. 903.0351 and  
105 921.0024, the term "violent felony offender of special concern"  
106 means a person who is on:

107 1. Probation or community control related to the  
108 commission of a qualifying offense committed on or after July 1,  
109 2006;

110 2. Probation or community control for any offense  
111 committed on or after July 1, 2006, and has previously been

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112 convicted of or had adjudication withheld for a qualifying  
113 offense;

114 3. Probation or community control for any offense  
115 committed on or after July 1, 2006, and is found to have  
116 violated that probation or community control by committing a  
117 qualifying offense;

118 4. Probation or community control and has previously been  
119 found by a court to be a habitual violent felony offender as  
120 defined in s. 775.084(1)(b) and has committed a qualifying  
121 offense on or after July 1, 2006;

122 5. Probation or community control and has previously been  
123 found by a court to be a three-time violent felony offender as  
124 defined in s. 775.084(1)(c) and has committed a qualifying  
125 offense on or after July 1, 2006; or

126 6. Probation or community control and has previously been  
127 found by a court to be a sexual predator under s. 775.21 and has  
128 committed a qualifying offense on or after July 1, 2006.

129 (c) For purposes of this section, the term "qualifying  
130 offense" means any of the following:

131 1. Kidnapping or attempted kidnapping under s. 787.01,  
132 false imprisonment of a child under the age of 13 under s.  
133 787.02(3), or luring or enticing a child under s. 787.025.

134 2. Murder or attempted murder under s. 782.04, attempted  
135 felony murder under s. 782.051, or manslaughter under s. 782.07.

136 3. Aggravated battery or attempted aggravated battery  
137 under s. 784.045.

138 4. Sexual battery or attempted sexual battery under s.  
139 794.011(2), (3), or (4).

- 140        5. Lewd or lascivious battery or attempted lewd or
- 141 lascivious battery under s. 800.04(4) or lewd or lascivious
- 142 molestation under s. 800.04(5) (b) .
- 143        6. Robbery or attempted robbery under s. 812.13,
- 144 carjacking under s. 812.133, or home invasion robbery under s.
- 145 812.135.
- 146        7. Lewd or lascivious offense upon or in the presence of
- 147 an elderly or disabled person or attempted lewd or lascivious
- 148 offense upon or in the presence of an elderly or disabled person
- 149 under s. 825.1025.
- 150        8. Sexual performance by a child or attempted sexual
- 151 performance by a child under s. 827.071.
- 152        9. Computer pornography under s. 847.0135(2) or (3),
- 153 transmission of child pornography under s. 847.0137, or selling
- 154 or buying of minors under s. 847.0145.
- 155        10. Poisoning food or water under s. 859.01.
- 156        11. Abuse of a dead human body under s. 872.06.
- 157        12. Any burglary offense or attempted burglary offense
- 158 that is either a first or second degree felony under s.
- 159 810.02(2) or (3) .
- 160        13. Arson or attempted arson under s. 806.01(1) .
- 161        14. Aggravated assault under s. 784.021.
- 162        15. Aggravated stalking under s. 784.048(3), (4), (5), or
- 163 (7) .
- 164        16. Aircraft piracy under s. 860.16.
- 165        17. Unlawful throwing, placing, or discharging of a
- 166 destructive device or bomb under s. 790.161(2), (3), or (4) .
- 167        18. Treason under s. 876.32.

168        19. Any offense committed in another jurisdiction that  
169 would be an offense listed in this paragraph if that offense had  
170 been committed in this state.

171        (d) In the case of an alleged violation of probation or  
172 community control by a violent felony offender of special  
173 concern, other than a failure to pay costs, fines, or  
174 restitution, the offender shall remain in custody pending the  
175 resolution of the probation or community control violation. The  
176 court shall not dismiss the probation or community control  
177 violation warrant pending against a violent felony offender of  
178 special concern without holding a recorded violation of  
179 probation hearing at which both the state and the offender are  
180 represented.

181        (e) If the court, after conducting the hearing required by  
182 paragraph (d), determines that a violent felony offender of  
183 special concern has committed a violation of probation or  
184 community control other than a failure to pay costs, fines, or  
185 restitution, the court shall decide whether to revoke the  
186 probation or community control.

187        1. If the court determines, by a preponderance of the  
188 evidence, that a violent felony offender of special concern  
189 poses a danger to community, the court shall revoke probation or  
190 community control and shall sentence the offender under s.  
191 921.0024 up to the statutory maximum.

192        2. In determining the danger to the community posed by the  
193 offender's release, the court may consider:

194        a. The nature and circumstances of the violation and any  
195 new offenses charged.

196           b. The offender's past and present conduct, including  
 197 convictions of crimes.

198           c. The offender's family ties, length of residence in the  
 199 community, employment history, and mental condition.

200           d. The offender's amenability to nonincarcerative  
 201 sanctions based on his or her history and conduct during the  
 202 probation or community control supervision from which the  
 203 violation hearing arises and any other previous supervisions,  
 204 including disciplinary records of previous incarcerations.

205           e. The likelihood that the offender will engage again in a  
 206 criminal course of conduct.

207           f. The weight of the evidence against the offender.

208           g. Any other facts the court considers relevant.

209           3. The court must enter a written order in support of its  
 210 finding.

211           Section 4. Paragraph (b) of subsection (1) of section  
 212 921.0024, Florida Statutes, is amended to read:

213           921.0024 Criminal Punishment Code; worksheet computations;  
 214 scoresheets.--

215           (1)

216           (b) WORKSHEET KEY:

217  
 218 Legal status points are assessed when any form of legal status  
 219 existed at the time the offender committed an offense before the  
 220 court for sentencing. Four (4) sentence points are assessed for  
 221 an offender's legal status.

222



223 Community sanction violation points are assessed when a  
 224 community sanction violation is before the court for sentencing.  
 225 Six (6) sentence points are assessed for each community sanction  
 226 violation, and each successive community sanction violation,  
 227 unless any of the following apply: ~~however,~~

228 1. If the community sanction violation includes a new  
 229 felony conviction before the sentencing court, twelve (12)  
 230 community sanction violation points are assessed for ~~the such~~  
 231 violation, and for each successive community sanction violation  
 232 involving a new felony conviction.

233 2. If the community sanction violation is committed by a  
 234 violent felony offender of special concern as defined in s.  
 235 948.06, but does not include a new felony conviction, nine (9)  
 236 community sanction violation points are assessed for the  
 237 violation and for each successive community sanction violation  
 238 not involving a new felony conviction.

239 3. If the community sanction violation is committed by a  
 240 violent felony offender of special concern as defined in s.  
 241 948.06, and includes a new felony conviction before the  
 242 sentencing court, eighteen (18) community sanction violation  
 243 points are assessed for the violation and for each successive  
 244 community sanction violation involving a new felony conviction.

245  
 246 Multiple counts of community sanction violations before the  
 247 sentencing court shall not be a basis for multiplying the  
 248 assessment of community sanction violation points.  
 249

250 Prior serious felony points: If the offender has a primary  
 251 offense or any additional offense ranked in level 8, level 9, or  
 252 level 10, and one or more prior serious felonies, a single  
 253 assessment of thirty (30) ~~30~~ points shall be added. For purposes  
 254 of this section, a prior serious felony is an offense in the  
 255 offender's prior record that is ranked in level 8, level 9, or  
 256 level 10 under s. 921.0022 or s. 921.0023 and for which the  
 257 offender is serving a sentence of confinement, supervision, or  
 258 other sanction or for which the offender's date of release from  
 259 confinement, supervision, or other sanction, whichever is later,  
 260 is within 3 years before the date the primary offense or any  
 261 additional offense was committed.

262  
 263 Prior capital felony points: If the offender has one or more  
 264 prior capital felonies in the offender's criminal record, points  
 265 shall be added to the subtotal sentence points of the offender  
 266 equal to twice the number of points the offender receives for  
 267 the primary offense and any additional offense. A prior capital  
 268 felony in the offender's criminal record is a previous capital  
 269 felony offense for which the offender has entered a plea of nolo  
 270 contendere or guilty or has been found guilty; or a felony in  
 271 another jurisdiction which is a capital felony in that  
 272 jurisdiction, or would be a capital felony if the offense were  
 273 committed in this state.

274  
 275 Possession of a firearm, semiautomatic firearm, or machine gun:  
 276 If the offender is convicted of committing or attempting to  
 277 commit any felony other than those enumerated in s. 775.087(2)

278 while having in his or her possession: a firearm as defined in  
 279 s. 790.001(6), an additional eighteen (18) ~~18~~ sentence points  
 280 are assessed; or if the offender is convicted of committing or  
 281 attempting to commit any felony other than those enumerated in  
 282 s. 775.087(3) while having in his or her possession a  
 283 semiautomatic firearm as defined in s. 775.087(3) or a machine  
 284 gun as defined in s. 790.001(9), an additional twenty-five (25)  
 285 ~~25~~ sentence points are assessed.

286

287 Sentencing multipliers:

288

289 Drug trafficking: If the primary offense is drug trafficking  
 290 under s. 893.135, the subtotal sentence points are multiplied,  
 291 at the discretion of the court, for a level 7 or level 8  
 292 offense, by 1.5. The state attorney may move the sentencing  
 293 court to reduce or suspend the sentence of a person convicted of  
 294 a level 7 or level 8 offense, if the offender provides  
 295 substantial assistance as described in s. 893.135(4).

296

297 Law enforcement protection: If the primary offense is a  
 298 violation of the Law Enforcement Protection Act under s.  
 299 775.0823(2), the subtotal sentence points are multiplied by 2.5.  
 300 If the primary offense is a violation of s. 775.0823(3), (4),  
 301 (5), (6), (7), or (8), the subtotal sentence points are  
 302 multiplied by 2.0. If the primary offense is a violation of s.  
 303 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
 304 Protection Act under s. 775.0823(9) or (10), the subtotal  
 305 sentence points are multiplied by 1.5.

306  
 307 Grand theft of a motor vehicle: If the primary offense is grand  
 308 theft of the third degree involving a motor vehicle and in the  
 309 offender's prior record, there are three or more grand thefts of  
 310 the third degree involving a motor vehicle, the subtotal  
 311 sentence points are multiplied by 1.5.

312  
 313 Offense related to a criminal street gang: If the offender is  
 314 convicted of the primary offense and committed that offense for  
 315 the purpose of benefiting, promoting, or furthering the  
 316 interests of a criminal street gang as prohibited under s.  
 317 874.04, the subtotal sentence points are multiplied by 1.5.

318  
 319 Domestic violence in the presence of a child: If the offender is  
 320 convicted of the primary offense and the primary offense is a  
 321 crime of domestic violence, as defined in s. 741.28, which was  
 322 committed in the presence of a child under 16 years of age who  
 323 is a family or household member as defined in s. 741.28(3) with  
 324 the victim or perpetrator, the subtotal sentence points are  
 325 multiplied by 1.5.

326 Section 5. For the purpose of incorporating the amendment  
 327 made by this act to section 948.06, Florida Statutes, in a  
 328 reference thereto, paragraph (b) of subsection (2) of section  
 329 948.012, Florida Statutes, is reenacted to read:

330 948.012 Split sentence of probation or community control  
 331 and imprisonment.--

332 (2) The court may also impose a split sentence whereby the  
 333 defendant is sentenced to a term of probation which may be

334 followed by a period of incarceration or, with respect to a  
335 felony, into community control, as follows:

336 (b) If the offender does not meet the terms and conditions  
337 of probation or community control, the court may revoke, modify,  
338 or continue the probation or community control as provided in s.  
339 948.06. If the probation or community control is revoked, the  
340 court may impose any sentence that it could have imposed at the  
341 time the offender was placed on probation or community control.  
342 The court may not provide credit for time served for any portion  
343 of a probation or community control term toward a subsequent  
344 term of probation or community control. However, the court may  
345 not impose a subsequent term of probation or community control  
346 which, when combined with any amount of time served on preceding  
347 terms of probation or community control for offenses pending  
348 before the court for sentencing, would exceed the maximum  
349 penalty allowable as provided in s. 775.082. Such term of  
350 incarceration shall be served under applicable law or county  
351 ordinance governing service of sentences in state or county  
352 jurisdiction. This paragraph does not prohibit any other  
353 sanction provided by law.

354 Section 6. For the purpose of incorporating the amendment  
355 made by this act to section 948.06, Florida Statutes, in a  
356 reference thereto, subsection (9) of section 948.10, Florida  
357 Statutes, is reenacted to read:

358 948.10 Community control programs.--

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

362 Section 7. For the purpose of incorporating the amendment  
363 made by this act to section 948.06, Florida Statutes, in a  
364 reference thereto, section 958.14, Florida Statutes, is  
365 reenacted to read:

366 958.14 Violation of probation or community control  
367 program.--A violation or alleged violation of probation or the  
368 terms of a community control program shall subject the youthful  
369 offender to the provisions of s. 948.06. However, no youthful  
370 offender shall be committed to the custody of the department for  
371 a substantive violation for a period longer than the maximum  
372 sentence for the offense for which he or she was found guilty,  
373 with credit for time served while incarcerated, or for a  
374 technical or nonsubstantive violation for a period longer than 6  
375 years or for a period longer than the maximum sentence for the  
376 offense for which he or she was found guilty, whichever is less,  
377 with credit for time served while incarcerated.

378 Section 8. This act shall take effect July 1, 2006.