

Amendment No.

CHAMBER ACTION

Senate

House

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Representatives Thurston and Gibbons offered the following:

Amendment

On page 3, line 8, through page 12, line 27, remove all of said lines and insert:

finer or make restitution payments or for technical violations.

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

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

(4) Notwithstanding any other provision of this section, a felony probationer or an offender in community control who is arrested for violating his or her probation or community control in a material respect may be taken before the court in the

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17 county or circuit in which the probationer or offender was
18 arrested. That court shall advise him or her of the ~~such~~ charge
19 of a violation and, if such charge is admitted, shall cause him
20 or her to be brought before the court that ~~which~~ granted the
21 probation or community control. If the ~~such~~ violation is not
22 admitted by the probationer or offender, the court may commit
23 him or her or release him or her with or without bail to await
24 further hearing. However, if the probationer or offender is
25 under supervision for any criminal offense proscribed in chapter
26 794, s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a
27 registered sexual predator or a registered sexual offender, or
28 is under supervision for a criminal offense for which he or she
29 would meet the registration criteria in s. 775.21, s. 943.0435,
30 or s. 944.607 but for the effective date of those sections, the
31 court must make a finding that the probationer or offender is
32 not a danger to the public prior to release with or without
33 bail. In determining the danger posed by the offender's or
34 probationer's release, the court may consider the nature and
35 circumstances of the violation and any new offenses charged; the
36 offender's or probationer's past and present conduct, including
37 convictions of crimes; any record of arrests without conviction
38 for crimes involving violence or sexual crimes; any other
39 evidence of allegations of unlawful sexual conduct or the use of
40 violence by the offender or probationer; the offender's or
41 probationer's family ties, length of residence in the community,
42 employment history, and mental condition; his or her history and
43 conduct during the probation or community control supervision
44 from which the violation arises and any other previous

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45 supervisions, including disciplinary records of previous
46 incarcerations; the likelihood that the offender or probationer
47 will engage again in a criminal course of conduct; the weight of
48 the evidence against the offender or probationer; and any other
49 facts the court considers relevant. The court, as soon as is
50 practicable, shall give the probationer or offender an
51 opportunity to be fully heard on his or her behalf in person or
52 by counsel. After the ~~such~~ hearing, the court shall make
53 findings of fact and forward the findings to the court that
54 ~~which~~ granted the probation or community control and to the
55 probationer or offender or his or her attorney. The findings of
56 fact by the hearing court are binding on the court that ~~which~~
57 granted the probation or community control. Upon the probationer
58 or offender being brought before it, the court that ~~which~~
59 granted the probation or community control may revoke, modify,
60 or continue the probation or community control or may place the
61 probationer into community control as provided in this section.
62 However, the probationer or offender shall not be released and
63 shall not be admitted to bail, but shall be brought before the
64 court that granted the probation or community control if any
65 violation of felony probation or community control other than a
66 failure to pay costs or fines or make restitution payments or
67 for technical violations is alleged to have been committed by:
68 (a) A violent felony offender of special concern, as
69 defined in this section;
70 (b) A person who is on felony probation or community
71 control for any offense committed on or after the effective date

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72 of this act and who is arrested for a qualifying offense as
73 defined in this section; or

74 (c) A person who is on felony probation or community
75 control and has previously been found by a court to be a
76 habitual violent felony offender as defined in s. 775.084(1)(b),
77 a three-time violent felony offender as defined in s.
78 775.084(1)(c), or a sexual predator under s. 775.21, and who is
79 arrested for committing a qualifying offense as defined in this
80 section on or after the effective date of this act.

81 (8)(a) In addition to complying with the provisions of
82 subsections (1)-(7), this subsection provides further
83 requirements regarding a probationer or offender in community
84 control who is a violent felony offender of special concern. The
85 provisions of this subsection shall control over any conflicting
86 provisions in subsections (1)-(7). For purposes of this
87 subsection, the term "convicted" means a determination of guilt
88 which is the result of a trial or the entry of a plea of guilty
89 or nolo contendere, regardless of whether adjudication is
90 withheld.

91 (b) For purposes of this section and ss. 903.0351,
92 948.064, and 921.0024, the term "violent felony offender of
93 special concern" means a person who is on:

94 1. Felony probation or community control related to the
95 commission of a qualifying offense committed on or after the
96 effective date of this act;

97 2. Felony probation or community control for any offense
98 committed on or after the effective date of this act, and has
99 previously been convicted of a qualifying offense;

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100 3. Felony probation or community control for any offense
101 committed on or after the effective date of this act, and is
102 found to have violated that probation or community control by
103 committing a qualifying offense;

104 4. Felony probation or community control and has
105 previously been found by a court to be a habitual violent felony
106 offender as defined in s. 775.084(1)(b) and has committed a
107 qualifying offense on or after the effective date of this act;

108 5. Felony probation or community control and has
109 previously been found by a court to be a three-time violent
110 felony offender as defined in s. 775.084(1)(c) and has committed
111 a qualifying offense on or after the effective date of this act;
112 or

113 6. Felony probation or community control and has
114 previously been found by a court to be a sexual predator under
115 s. 775.21 and has committed a qualifying offense on or after the
116 effective date of this act.

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

119 1. Kidnapping or attempted kidnapping under s. 787.01,
120 false imprisonment of a child under the age of 13 under s.
121 787.02(3), or luring or enticing a child under s. 787.025(2)(b)
122 or (c).

123 2. Murder or attempted murder under s. 782.04, attempted
124 felony murder under s. 782.051, or manslaughter under s. 782.07.

125 3. Aggravated battery or attempted aggravated battery
126 under s. 784.045.

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- 127 4. Sexual battery or attempted sexual battery under s.
128 794.011(2), (3), (4), or (8)(b) or (c).
- 129 5. Lewd or lascivious battery or attempted lewd or
130 lascivious battery under s. 800.04(4), lewd or lascivious
131 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
132 conduct under s. 800.04(6)(b), or lewd or lascivious exhibition
133 under s. 800.04(7)(c).
- 134 6. Robbery or attempted robbery under s. 812.13,
135 carjacking or attempted carjacking under s. 812.133, or home
136 invasion robbery or attempted home invasion robbery under s.
137 812.135.
- 138 7. Lewd or lascivious offense upon or in the presence of
139 an elderly or disabled person or attempted lewd or lascivious
140 offense upon or in the presence of an elderly or disabled person
141 under s. 825.1025.
- 142 8. Sexual performance by a child or attempted sexual
143 performance by a child under s. 827.071.
- 144 9. Computer pornography under s. 847.0135(2) or (3),
145 transmission of child pornography under s. 847.0137, or selling
146 or buying of minors under s. 847.0145.
- 147 10. Poisoning food or water under s. 859.01.
- 148 11. Abuse of a dead human body under s. 872.06.
- 149 12. Any burglary offense or attempted burglary offense
150 that is either a first-degree felony or second-degree felony
151 under s. 810.02(2) or (3).
- 152 13. Arson or attempted arson under s. 806.01(1).
- 153 14. Aggravated assault under s. 784.021.

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154 15. Aggravated stalking under s. 784.048(3), (4), (5), or
155 (7).

156 16. Aircraft piracy under s. 860.16.

157 17. Unlawful throwing, placing, or discharging of a
158 destructive device or bomb under s. 790.161(2), (3), or (4).

159 18. Treason under s. 876.32.

160 19. Any offense committed in another jurisdiction which
161 would be an offense listed in this paragraph if that offense had
162 been committed in this state.

163 (d) In the case of an alleged violation of probation or
164 community control other than a failure to pay costs, fines, or
165 restitution, or for technical violations, the following
166 individuals shall remain in custody pending the resolution of
167 the probation or community control violation:

168 1. A violent felony offender of special concern, as
169 defined in this section;

170 2. A person who is on felony probation or community
171 control for any offense committed on or after the effective date
172 of this act and who is arrested for a qualifying offense as
173 defined in this section; or

174 3. A person who is on felony probation or community
175 control and has previously been found by a court to be a
176 habitual violent felony offender as defined in s. 775.084(1)(b),
177 a three-time violent felony offender as defined in s.
178 775.084(1)(c), or a sexual predator under s. 775.21, and who is
179 arrested for committing a qualifying offense as defined in this
180 section on or after the effective date of this act.

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182 The court shall not dismiss the probation or community control
183 violation warrant pending against an offender enumerated in this
184 paragraph without holding a recorded violation-of-probation
185 hearing at which both the state and the offender are
186 represented.

187 (e) If the court, after conducting the hearing required by
188 paragraph (d), determines that a violent felony offender of
189 special concern has committed a violation of probation or
190 community control other than a failure to pay costs, fines, or
191 restitution, or for technical violations, the court shall:

192 1. Make written findings as to whether or not the violent
193 felony offender of special concern poses a danger to the
194 community. In determining the danger to the community posed by
195 the offender's release, the court shall base its findings on one
196 or more of the following:

197 a. The nature and circumstances of the violation and any
198 new offenses charged.

199 b. The offender's present conduct, including criminal
200 convictions.

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

206 d. The weight of the evidence against the offender.

207 e. Any other facts the court considers relevant.

208 2. Decide whether to revoke the probation or community
209 control.

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210 a. If the court has found that a violent felony offender
211 of special concern poses a danger to the community, the court
212 shall revoke probation and shall sentence the offender up to the
213 statutory maximum, or longer if permitted by law.

214 b. If the court has found that a violent felony offender
215 of special concern does not pose a danger to the community, the
216 court may revoke, modify, or continue the probation or community
217 control or may place the probationer into community control as
218 provided in this section.

219 Section 4. Section 948.064, Florida Statutes, is created
220 to read:

221 948.064 Notification of status as a violent felony
222 offender of special concern.--

223 (1) To facilitate the information available to the court
224 at first appearance hearings and at all subsequent hearings for
225 "violent felony offenders of special concern," as defined in s.
226 948.06, the Department of Corrections shall, no later than
227 October 1, 2007, develop a system for identifying the offenders
228 in the department's database and post on the Department of Law
229 Enforcement's Criminal Justice Intranet a listing of all
230 "violent felony offenders of special concern" who are under
231 community supervision.

232 (2) The county where the arrested person is booked shall
233 provide the following information to the court at the time of
234 the first appearance:

235 (a) State and national criminal history information;

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236 (b) All criminal justice information available in the
237 Florida Crime Information Center and the National Crime
238 Information Center; and

239 (c) Notice that the arrested person meets the requirement
240 for restrictions on pretrial release pending the probation-
241 violation hearing or community-control-violation hearing in s.
242 903.0351(1)(b).

243 (3) The courts shall assist the department's dissemination
244 of critical information by creating and maintaining an automated
245 system to provide the information as specified in this section
246 to the court with the jurisdiction to conduct the hearings.

247 (4) The state attorney, or the statewide prosecutor if
248 applicable, shall advise the court at each critical stage in the
249 judicial process, at which the state attorney or statewide
250 prosecutor is represented, whether an alleged or convicted
251 offender is a violent felony offender of special concern; a
252 person who is on felony probation or community control for any
253 offense committed on or after the effective date of this act and
254 who is arrested for a qualifying offense; or a person who is on
255 felony probation or community control and has previously been
256 found by a court to be a habitual violent felony offender as
257 defined in s. 775.084(1)(b), a three-time violent felony
258 offender as defined in s. 775.084(1)(c), or a sexual predator
259 under s. 775.21, and who is arrested for committing a qualifying
260 offense on or after the effective date of this act.

261 Section 5. Paragraph (b) of subsection (1) of section
262 921.0024, Florida Statutes, is amended to read:

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263 921.0024 Criminal Punishment Code; worksheet computations;
264 scoresheets.--

265 (1)

266 (b) WORKSHEET KEY:

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268 Legal status points are assessed when any form of legal status
269 existed at the time the offender committed an offense before the
270 court for sentencing. Four (4) sentence points are assessed for
271 an offender's legal status.

272

273 Community sanction violation points are assessed when a
274 community sanction violation is before the court for sentencing.
275 Six (6) sentence points are assessed for each community sanction
276 violation, and each successive community sanction violation,
277 unless any of the following apply; however,

278 1. If the community sanction violation includes a new
279 felony conviction before the sentencing court, twelve (12)
280 community sanction violation points are assessed for the such
281 violation, and for each successive community sanction violation
282 involving a new felony conviction.

283 2. If the community sanction violation is committed by a
284 violent felony offender of special concern as defined in s.
285 948.06:

286 a. Twelve (12) community sanction violation points are
287 assessed for the violation and for each successive violation of
288 felony probation or community control where:

289 (I) The violation does not include a new felony
290 conviction; and

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HOUSE AMENDMENT

Bill No. CS/CS/SB 146

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291 (II) The community sanction violation is not based solely
292 on the probationer or offender's failure to pay costs or fines
293 or make restitution payments or for technical violations.