

Bill No. SB 146

Barcode 491634

CHAMBER ACTION

Senate

House

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The Committee on Criminal Justice (Lynn) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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

Section 3. Subsection (4) of section 948.06, Florida

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1 Statutes, is amended, and subsection (8) is added to that
2 section, to read:

3 948.06 Violation of probation or community control;
4 revocation; modification; continuance; failure to pay
5 restitution or cost of supervision.--

6 (4) Notwithstanding any other provision of this
7 section, a probationer or an offender in community control who
8 is arrested for violating his or her probation or community
9 control in a material respect may be taken before the court in
10 the county or circuit in which the probationer or offender was
11 arrested. That court shall advise him or her of such charge of
12 a violation and, if such charge is admitted, shall cause him
13 or her to be brought before the court which granted the
14 probation or community control. If such violation is not
15 admitted by the probationer or offender, the court may commit
16 him or her or release him or her with or without bail to await
17 further hearing. However, if the probationer or offender is
18 under supervision for any criminal offense proscribed in
19 chapter 794, s. 800.04(4), (5), (6), s. 827.071, or s.
20 847.0145, or is a registered sexual predator or a registered
21 sexual offender, or is under supervision for a criminal
22 offense for which he or she would meet the registration
23 criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the
24 effective date of those sections, the court must make a
25 finding that the probationer or offender is not a danger to
26 the public prior to release with or without bail. In
27 determining the danger posed by the offender's or
28 probationer's release, the court may consider the nature and
29 circumstances of the violation and any new offenses charged;
30 the offender's or probationer's past and present conduct,
31 including convictions of crimes; any record of arrests without

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1 conviction for crimes involving violence or sexual crimes; any
2 other evidence of allegations of unlawful sexual conduct or
3 the use of violence by the offender or probationer; the
4 offender's or probationer's family ties, length of residence
5 in the community, employment history, and mental condition;
6 his or her history and conduct during the probation or
7 community control supervision from which the violation arises
8 and any other previous supervisions, including disciplinary
9 records of previous incarcerations; the likelihood that the
10 offender or probationer will engage again in a criminal course
11 of conduct; the weight of the evidence against the offender or
12 probationer; and any other facts the court considers relevant.
13 The court, as soon as is practicable, shall give the
14 probationer or offender an opportunity to be fully heard on
15 his or her behalf in person or by counsel. After such hearing,
16 the court shall make findings of fact and forward the findings
17 to the court which granted the probation or community control
18 and to the probationer or offender or his or her attorney. The
19 findings of fact by the hearing court are binding on the court
20 which granted the probation or community control. Upon the
21 probationer or offender being brought before it, the court
22 which granted the probation or community control may revoke,
23 modify, or continue the probation or community control or may
24 place the probationer into community control as provided in
25 this section. However, if any violation other than a failure
26 to pay costs, fines, or restitution payments is alleged to
27 have been committed by a violent felony offender of special
28 concern, as defined in this section, the probationer or
29 offender shall not be released and shall not be admitted to
30 bail, but shall be brought before the court that granted the
31 probation or community control.

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1 (8)(a) In addition to complying with the provisions of
 2 subsections (1)-(7), this subsection provides further
 3 requirements regarding a probationer or offender in community
 4 control who is a violent felony offender of special concern.
 5 The provisions of this subsection shall control over any
 6 conflicting provisions in subsections (1)-(7).

7 (b) For purposes of this section and ss. 903.0351,
 8 948.064, and 921.0024, the term "violent felony offender of
 9 special concern" means a person who is on:

10 1. Probation or community control related to the
 11 commission of a qualifying offense committed on or after the
 12 effective date of this act;

13 2. Probation or community control for any offense
 14 committed on or after the effective date of this act, and has
 15 previously been convicted of or had adjudication withheld for
 16 a qualifying offense;

17 3. Probation or community control for any offense
 18 committed on or after the effective date of this act, and is
 19 found to have violated that probation or community control by
 20 committing a qualifying offense;

21 4. Probation or community control and has previously
 22 been found by a court to be a habitual violent felony offender
 23 as defined in s. 775.084(1)(b) and has committed a qualifying
 24 offense on or after the effective date of this act; or

25 5. Probation or community control and has previously
 26 been found by a court to be a three-time violent felony
 27 offender as defined in s. 775.084(1)(c) and has committed a
 28 qualifying offense on or after the effective date of this act;
 29 or

30 6. Probation or community control and has previously
 31 been found by a court to be a sexual predator under s. 775.21

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1 and has committed a qualifying offense on or after the
2 effective date of this act.

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

5 1. Kidnapping or attempted kidnapping under s. 787.01,
6 false imprisonment of a child under the age of 13 under s.
7 787.02(3), or luring or enticing a child under s. 787.025.

8 2. Murder or attempted murder under s. 782.04,
9 attempted felony murder under s. 782.051, or manslaughter
10 under s. 782.07.

11 3. Aggravated battery or attempted aggravated battery
12 under s. 784.045.

13 4. Sexual battery or attempted sexual battery under s.
14 794.011(2), (3), (4), or (8)(b) or (c).

15 5. Lewd or lascivious battery or attempted lewd or
16 lascivious battery under s. 800.04(4), lewd or lascivious
17 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
18 conduct under s. 800.04(6)(b), or lewd or lascivious
19 exhibition under s. 800.04(7)(c).

20 6. Robbery or attempted robbery under s. 812.13,
21 carjacking or attempted carjacking under s. 812.133, or home
22 invasion robbery or attempted home invasion robbery under s.
23 812.135.

24 7. Lewd or lascivious offense upon or in the presence
25 of an elderly or disabled person or attempted lewd or
26 lascivious offense upon or in the presence of any elderly or
27 disabled person under s. 825.1025.

28 8. Sexual performance by a child or attempted sexual
29 performance by a child under s. 827.071.

30 9. Computer pornography under s. 847.0135(2) or (3),
31 transmission of child pornography under s. 847.0137, or

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1 selling or buying of minors under s. 847.0145.

2 10. Poisoning food or water under s. 859.01.

3 11. Abuse of a dead human body under s. 872.06.

4 12. Any burglary offense or attempted burglary offense
5 that is either a first or second degree felony under s.
6 810.02(2) or (3).

7 13. Arson or attempted arson under s. 806.01(1).

8 14. Aggravated assault under s. 784.021.

9 15. Aggravated stalking under s. 784.048(3), (4), (5),
10 or (7).

11 16. Aircraft piracy under s. 860.16.

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

14 18. Treason under s. 876.32.

15 19. Any offense committed in another jurisdiction that
16 would be an offense listed in this paragraph if that offense
17 had been committed in this state.

18 (d) In the case of an alleged violation of probation
19 or community control by a violent felony offender of special
20 concern, other than a failure to pay costs, fines, or
21 restitution, the offender shall remain in custody pending the
22 resolution of the probation or community control violation.
23 The court shall not dismiss the probation or community control
24 violation warrant pending against a violent felony offender of
25 special concern without holding a recorded violation of
26 probation hearing at which both the state and the offender are
27 represented.

28 (e) If the court, after conducting the hearing
29 required by paragraph (d), determines that a violent felony
30 offender of special concern has committed a violation of
31 probation or community control other than a failure to pay

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1 costs, fines, or restitution, the court shall decide whether
2 to revoke the probation or community control.

3 1. If the court determines, by a preponderance of the
4 evidence, that a violent felony offender of special concern
5 poses a danger to the community, the court shall revoke
6 probation or community control and shall sentence the offender
7 under s. 921.0024 up to the statutory maximum, or longer if
8 permitted by law.

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

11 a. The nature and circumstances of the violation and
12 any new offenses charged.

13 b. The offender's past and present conduct, including
14 criminal convictions.

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

17 d. The offender's amenability to nonincarcerative
18 sanctions based on his or her history and conduct during the
19 probation or community control supervision from which the
20 violation hearing arises and any other previous supervisions,
21 including disciplinary records of previous incarcerations.

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

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

25 g. Any other facts the court considers relevant.

26 3. The court must enter a written order in support of
27 its finding.

28 Section 4. Section 948.064, Florida Statutes, is
29 created to read:

30 948.064 Notification of status as a violent felony
31 offender of special concern.--

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1 assessed for an offender's legal status.

2

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

8 ~~however,~~

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

14 2. If the community sanction violation is committed by
15 a violent felony offender of special concern as defined in s.
16 948.06, but does not include a new felony conviction, twelve
17 (12) community sanction violation points are assessed for the
18 violation and for each successive community sanction violation
19 not involving a new felony conviction.

20 3. If the community sanction violation is committed by
21 a violent felony offender of special concern as defined in s.
22 948.06, and includes a new felony conviction before the
23 sentencing court, twenty-four (24) community sanction
24 violation points are assessed for the violation and for each
25 successive community sanction violation involving a new felony
26 conviction.

27

28 Multiple counts of community sanction violations before the
29 sentencing court shall not be a basis for multiplying the
30 assessment of community sanction violation points.

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

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

26
 27 Possession of a firearm, semiautomatic firearm, or machine
 28 gun: If the offender is convicted of committing or attempting
 29 to commit any felony other than those enumerated in s.
 30 775.087(2) while having in his or her possession: a firearm as
 31 defined in s. 790.001(6), an additional eighteen (18) ~~18~~

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1 sentence points are assessed; or if the offender is convicted
 2 of committing or attempting to commit any felony other than
 3 those enumerated in s. 775.087(3) while having in his or her
 4 possession a semiautomatic firearm as defined in s. 775.087(3)
 5 or a machine gun as defined in s. 790.001(9), an additional
 6 twenty-five (25) 25 sentence points are assessed.

7

8 Sentencing multipliers:

9

10 Drug trafficking: If the primary offense is drug trafficking
 11 under s. 893.135, the subtotal sentence points are multiplied,
 12 at the discretion of the court, for a level 7 or level 8
 13 offense, by 1.5. The state attorney may move the sentencing
 14 court to reduce or suspend the sentence of a person convicted
 15 of a level 7 or level 8 offense, if the offender provides
 16 substantial assistance as described in s. 893.135(4).

17

18 Law enforcement protection: If the primary offense is a
 19 violation of the Law Enforcement Protection Act under s.
 20 775.0823(2), the subtotal sentence points are multiplied by
 21 2.5. If the primary offense is a violation of s. 775.0823(3),
 22 (4), (5), (6), (7), or (8), the subtotal sentence points are
 23 multiplied by 2.0. If the primary offense is a violation of s.
 24 784.07(3) or s. 775.0875(1), or of the Law Enforcement
 25 Protection Act under s. 775.0823(9) or (10), the subtotal
 26 sentence points are multiplied by 1.5.

27

28 Grand theft of a motor vehicle: If the primary offense is
 29 grand theft of the third degree involving a motor vehicle and
 30 in the offender's prior record, there are three or more grand
 31 thefts of the third degree involving a motor vehicle, the

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1 subtotal sentence points are multiplied by 1.5.

2

3 Offense related to a criminal street gang: If the offender is
4 convicted of the primary offense and committed that offense
5 for the purpose of benefiting, promoting, or furthering the
6 interests of a criminal street gang as prohibited under s.
7 874.04, the subtotal sentence points are multiplied by 1.5.

8

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

16 Section 6. For the purpose of incorporating the
17 amendment made by this act to section 948.06, Florida
18 Statutes, in a reference thereto, paragraph (b) of subsection
19 (2) of section 948.012, Florida Statutes, is reenacted to
20 read:

21 948.012 Split sentence of probation or community
22 control and imprisonment.--

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

27 (b) If the offender does not meet the terms and
28 conditions of probation or community control, the court may
29 revoke, modify, or continue the probation or community control
30 as provided in s. 948.06. If the probation or community
31 control is revoked, the court may impose any sentence that it

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1 could have imposed at the time the offender was placed on
 2 probation or community control. The court may not provide
 3 credit for time served for any portion of a probation or
 4 community control term toward a subsequent term of probation
 5 or community control. However, the court may not impose a
 6 subsequent term of probation or community control which, when
 7 combined with any amount of time served on preceding terms of
 8 probation or community control for offenses pending before the
 9 court for sentencing, would exceed the maximum penalty
 10 allowable as provided in s. 775.082. Such term of
 11 incarceration shall be served under applicable law or county
 12 ordinance governing service of sentences in state or county
 13 jurisdiction. This paragraph does not prohibit any other
 14 sanction provided by law.

15 Section 7. For the purpose of incorporating the
 16 amendment made by this act to section 948.06, Florida
 17 Statutes, in a reference thereto, subsection (9) of section
 18 948.10, Florida Statutes, is reenacted to read:

19 948.10 Community control programs.--

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

23 Section 8. For the purpose of incorporating the
 24 amendment made by this act to section 948.06, Florida
 25 Statutes, in a reference thereto, section 958.14, Florida
 26 Statutes, is reenacted to read:

27 958.14 Violation of probation or community control
 28 program.--A violation or alleged violation of probation or the
 29 terms of a community control program shall subject the
 30 youthful offender to the provisions of s. 948.06. However, no
 31 youthful offender shall be committed to the custody of the

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1 department for a substantive violation for a period longer
 2 than the maximum sentence for the offense for which he or she
 3 was found guilty, with credit for time served while
 4 incarcerated, or for a technical or nonsubstantive violation
 5 for a period longer than 6 years or for a period longer than
 6 the maximum sentence for the offense for which he or she was
 7 found guilty, whichever is less, with credit for time served
 8 while incarcerated.

9 Section 9. If any provision of this act or the
 10 application thereof to any person or circumstance is held
 11 invalid, the invalidity does not affect other provisions or
 12 applications of the act which can be given effect without the
 13 invalid provision or application, and, to this end, the
 14 provisions of this act are declared severable.

15 Section 10. This act shall take effect upon becoming a
 16 law.

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 18
 19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete everything before the enacting clause

22
 23 and insert:

24 A bill to be entitled
 25 An act relating to violent felony offenders;
 26 providing a short title; creating s. 903.0351,
 27 F.S.; prohibiting bail or other pretrial
 28 release for specified violent felony offenders
 29 of special concern without a hearing; amending
 30 s. 948.06, F.S.; providing definitions;
 31 providing that certain alleged violations of

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1 probation or community control by violent
2 felony offenders of special concern require
3 hearings and require the alleged offenders to
4 remain in custody pending hearing; providing
5 requirements for such hearings; creating s.
6 948.064 F.S.; providing for notification to
7 criminal justice system of an offender's status
8 as a violent felony offender of special
9 concern; amending s. 921.0024, F.S.; revising
10 Criminal Punishment Code worksheet computations
11 to provide additional community sanction
12 violation points for certain community sanction
13 violations committed by violent felony
14 offenders of special concern; reenacting ss.
15 948.012(2)(b), 948.10(9), and 958.14, F.S.,
16 relating to split sentence of probation or
17 community control and imprisonment, community
18 control programs, and violation of probation or
19 community control, respectively, to incorporate
20 the amendment to s. 948.06, F.S., in references
21 thereto; providing a severability clause;
22 providing an effective date.

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