

Bill No. CS for SB 146

Barcode 524568

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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The Committee on Judiciary (Webster) recommended the following
~~substitute for~~ amendment (943136):

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 Restrictions on pretrial release pending probation or community control violation hearing.--

(1) In the instance of an alleged violation of felony probation or community control, bail or any other form of pretrial release shall not be granted prior to the resolution of the probation or community control violation hearing to:

(a) A violent felony offender of special concern as defined in s. 948.06;

(b) A person who is on felony probation or community control for any offense committed on or after the effective

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1 date of this act and who is arrested for a qualifying offense
2 as defined in s. 948.06(8)(c); or

3 (c) A person who is on felony probation or community
4 control and has previously been found by a court to be a
5 habitual violent felony offender as defined by s.
6 775.084(1)(b), a three-time violent felony offender as defined
7 by s. 775.084(1)(c), or a sexual predator under s. 775.21, and
8 who is arrested for committing a qualifying offense as defined
9 in s. 948.06(8)(c) on or after the effective date of this act.

10 (2) Subsection (1) shall not apply where the alleged
11 violation of felony probation or community control is based
12 solely on the probationer or offender's failure to pay costs
13 or fines or make restitution payments.

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

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

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

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1 the probationer or offender is under supervision for any
2 criminal offense proscribed in chapter 794, s. 800.04(4), (5),
3 (6), s. 827.071, or s. 847.0145, or is a registered sexual
4 predator or a registered sexual offender, or is under
5 supervision for a criminal offense for which he or she would
6 meet the registration criteria in s. 775.21, s. 943.0435, or
7 s. 944.607 but for the effective date of those sections, the
8 court must make a finding that the probationer or offender is
9 not a danger to the public prior to release with or without
10 bail. In determining the danger posed by the offender's or
11 probationer's release, the court may consider the nature and
12 circumstances of the violation and any new offenses charged;
13 the offender's or probationer's past and present conduct,
14 including convictions of crimes; any record of arrests without
15 conviction for crimes involving violence or sexual crimes; any
16 other evidence of allegations of unlawful sexual conduct or
17 the use of violence by the offender or probationer; the
18 offender's or probationer's family ties, length of residence
19 in the community, employment history, and mental condition;
20 his or her history and conduct during the probation or
21 community control supervision from which the violation arises
22 and any other previous supervisions, including disciplinary
23 records of previous incarcerations; the likelihood that the
24 offender or probationer will engage again in a criminal course
25 of conduct; the weight of the evidence against the offender or
26 probationer; and any other facts the court considers relevant.
27 The court, as soon as is practicable, shall give the
28 probationer or offender an opportunity to be fully heard on
29 his or her behalf in person or by counsel. After the ~~such~~
30 hearing, the court shall make findings of fact and forward the
31 findings to the court that ~~which~~ granted the probation or

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

15 (a) A violent felony offender of special concern, as
 16 defined in this section;

17 (b) A person who is on felony probation or community
 18 control for any offense committed on or after the effective
 19 date of this act and who is arrested for a qualifying offense
 20 as defined in this section; or

21 (c) A person who is on felony probation or community
 22 control and has previously been found by a court to be a
 23 habitual violent felony offender as defined by s.
 24 775.084(1)(b), a three-time violent felony offender as defined
 25 by s. 775.084(1)(c), or a sexual predator under s. 775.21, and
 26 who is arrested for committing a qualifying offense as defined
 27 in this section on or after the effective date of this act.

28 (8)(a) In addition to complying with the provisions of
 29 subsections (1)-(7), this subsection provides further
 30 requirements regarding a probationer or offender in community
 31 control who is a violent felony offender of special concern.

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1 The provisions of this subsection shall control over any
 2 conflicting provisions in subsections (1)-(7). For purposes of
 3 this subsection, the term "convicted" means a determination of
 4 guilt which is the result of a trial or the entry of a plea of
 5 guilty or nolo contendere, regardless of whether adjudication
 6 is withheld.

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

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

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

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

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

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

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1 s. 775.21 and has committed a qualifying offense on or after
2 the 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.
8 787.025(2)(b) or (c).

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

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

14 4. Sexual battery or attempted sexual battery under s.
15 794.011(2), (3), (4), or (8)(b) or (c).

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

21 6. Robbery or attempted robbery under s. 812.13,
22 carjacking or attempted carjacking under s. 812.133, or home
23 invasion robbery or attempted home invasion robbery under s.
24 812.135.

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

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

31 9. Computer pornography under s. 847.0135(2) or (3),

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1 transmission of child pornography under s. 847.0137, or
2 selling or buying of minors under s. 847.0145.

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

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

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

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

9 14. Aggravated assault under s. 784.021.

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

12 16. Aircraft piracy under s. 860.16.

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

15 18. Treason under s. 876.32.

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

19 (d) In the case of an alleged violation of probation
20 or community control other than a failure to pay costs, fines,
21 or restitution, the following individuals shall remain in
22 custody pending the resolution of the probation or community
23 control violation:

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

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

30 3. A person who is on felony probation or community
31 control and has previously been found by a court to be a

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1 habitual violent felony offender as defined by s.
 2 775.084(1)(b), a three-time violent felony offender as defined
 3 by s. 775.084(1)(c), or a sexual predator under s. 775.21, and
 4 who is arrested for committing a qualifying offense as defined
 5 in this section on or after the effective date of this act.

6
 7 The court shall not dismiss the probation or community control
 8 violation warrant pending against an offender enumerated in
 9 this paragraph without holding a recorded
 10 violation-of-probation hearing at which both the state and the
 11 offender are represented.

12 (e) If the court, after conducting the hearing
 13 required by paragraph (d), determines that a violent felony
 14 offender of special concern has committed a violation of
 15 probation or community control other than a failure to pay
 16 costs, fines, or restitution, the court shall:

17 1. Make written findings as to whether or not the
 18 violent felony offender of special concern poses a danger to
 19 the community. In determining the danger to the community
 20 posed by the offender's release, the court shall base its
 21 findings on one or more of the following:

22 a. The nature and circumstances of the violation and
 23 any new offenses charged.

24 b. The offender's present conduct, including criminal
 25 convictions.

26 c. The offender's amenability to nonincarcerative
 27 sanctions based on his or her history and conduct during the
 28 probation or community control supervision from which the
 29 violation hearing arises and any other previous supervisions,
 30 including disciplinary records of previous incarcerations.

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

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1 e. Any other facts the court considers relevant.
 2 2. Decide whether to revoke the probation or community
 3 control.

4 a. If the court has found that a violent felony
 5 offender of special concern poses a danger to the community,
 6 the court shall revoke probation and shall sentence the
 7 offender up to the statutory maximum, or longer if permitted
 8 by law.

9 b. If the court has found that a violent felony
 10 offender of special concern does not pose a danger to the
 11 community, the court may revoke, modify, or continue the
 12 probation or community control or may place the probationer
 13 into community control as provided in this section.

14 Section 4. Section 948.064, Florida Statutes, is
 15 created to read:

16 948.064 Notification of status as a violent felony
 17 offender of special concern.--

18 (1) To facilitate the information available to the
 19 court at first appearance hearings and at all subsequent
 20 hearings for "violent felony offenders of special concern," as
 21 defined in s. 948.06, the Department of Corrections shall, no
 22 later than October 1, 2007, develop a system for identifying
 23 the offenders in the department's database and post on the
 24 Department of Law Enforcement's Criminal Justice Intranet a
 25 listing of all "violent felony offenders of special concern"
 26 who are under community supervision.

27 (2) The county where the arrested person is booked
 28 shall provide the following information to the court at the
 29 time of the first appearance:

30 (a) State and national criminal history information;
 31 (b) All criminal justice information available in the

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1 Florida Crime Information Center and the National Crime
2 Information Center; and

3 (c) Notice that the arrested person meets the
4 requirement for restrictions on pretrial release pending
5 probation or community control violation hearing in s.
6 903.0351(1)(b).

7 (3) The courts shall assist the department's
8 dissemination of critical information by creating and
9 maintaining an automated system to provide the information as
10 specified in this section to the court with the jurisdiction
11 to conduct the hearings.

12 (4) The state attorney, or the statewide prosecutor if
13 applicable, shall advise the court at each critical stage in
14 the judicial process, at which the state attorney or statewide
15 prosecutor is represented, whether an alleged or convicted
16 offender is a "violent felony offender of special concern"; a
17 person who is on felony probation or community control for any
18 offense committed on or after the effective date of this act
19 and who is arrested for a qualifying offense; or a person who
20 is on felony probation or community control and has previously
21 been found by a court to be a habitual violent felony offender
22 as defined by s. 775.084(1)(b), a three-time violent felony
23 offender as defined by s. 775.084(1)(c), or a sexual predator
24 under s. 775.21, and who is arrested for committing a
25 qualifying offense on or after the effective date of this act.

26 Section 5. Paragraph (b) of subsection (1) of section
27 921.0024, Florida Statutes, is amended to read:

28 921.0024 Criminal Punishment Code; worksheet
29 computations; scoresheets.--

30 (1)

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(b) WORKSHEET KEY:

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

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

~~however,~~

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

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

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

(I) the violation does not include a new felony conviction; and

(II) the community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or make restitution payments.

b. Twenty-four (24) community sanction violation points are assessed for the violation and for each successive

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1 violation of felony probation or community control where the
2 violation includes a new felony conviction.

3
4 Multiple counts of community sanction violations before the
5 sentencing court shall not be a basis for multiplying the
6 assessment of community sanction violation points.

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

21
22 Prior capital felony points: If the offender has one or more
23 prior capital felonies in the offender's criminal record,
24 points shall be added to the subtotal sentence points of the
25 offender equal to twice the number of points the offender
26 receives for the primary offense and any additional offense. A
27 prior capital felony in the offender's criminal record is a
28 previous capital felony offense for which the offender has
29 entered a plea of nolo contendere or guilty or has been found
30 guilty; or a felony in another jurisdiction which is a capital
31 felony in that jurisdiction, or would be a capital felony if

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1 the offense were committed in this state.

2

3 Possession of a firearm, semiautomatic firearm, or machine
4 gun: If the offender is convicted of committing or attempting
5 to commit any felony other than those enumerated in s.

6 775.087(2) while having in his or her possession: a firearm as
7 defined in s. 790.001(6), an additional eighteen (18) ~~18~~

8 sentence points are assessed; or if the offender is convicted
9 of committing or attempting to commit any felony other than

10 those enumerated in s. 775.087(3) while having in his or her

11 possession a semiautomatic firearm as defined in s. 775.087(3)

12 or a machine gun as defined in s. 790.001(9), an additional

13 twenty-five (25) ~~25~~ sentence points are assessed.

14

15 Sentencing multipliers:

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17 Drug trafficking: If the primary offense is drug trafficking
18 under s. 893.135, the subtotal sentence points are multiplied,
19 at the discretion of the court, for a level 7 or level 8

20 offense, by 1.5. The state attorney may move the sentencing

21 court to reduce or suspend the sentence of a person convicted

22 of a level 7 or level 8 offense, if the offender provides

23 substantial assistance as described in s. 893.135(4).

24

25 Law enforcement protection: If the primary offense is a

26 violation of the Law Enforcement Protection Act under s.

27 775.0823(2), the subtotal sentence points are multiplied by

28 2.5. If the primary offense is a violation of s. 775.0823(3),

29 (4), (5), (6), (7), or (8), the subtotal sentence points are

30 multiplied by 2.0. If the primary offense is a violation of s.

31 784.07(3) or s. 775.0875(1), or of the Law Enforcement

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1 Protection Act under s. 775.0823(9) or (10), the subtotal
2 sentence points are multiplied by 1.5.

3
4 Grand theft of a motor vehicle: If the primary offense is
5 grand theft of the third degree involving a motor vehicle and
6 in the offender's prior record, there are three or more grand
7 thefts of the third degree involving a motor vehicle, the
8 subtotal sentence points are multiplied by 1.5.

9
10 Offense related to a criminal street gang: If the offender is
11 convicted of the primary offense and committed that offense
12 for the purpose of benefiting, promoting, or furthering the
13 interests of a criminal street gang as prohibited under s.
14 874.04, the subtotal sentence points are multiplied by 1.5.

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

23 Section 6. For the purpose of incorporating the
24 amendment made by this act to section 948.06, Florida
25 Statutes, in a reference thereto, paragraph (b) of subsection
26 (2) of section 948.012, Florida Statutes, is reenacted to
27 read:

28 948.012 Split sentence of probation or community
29 control and imprisonment.--

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

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

3 (b) If the offender does not meet the terms and
4 conditions of probation or community control, the court may
5 revoke, modify, or continue the probation or community control
6 as provided in s. 948.06. If the probation or community
7 control is revoked, the court may impose any sentence that it
8 could have imposed at the time the offender was placed on
9 probation or community control. The court may not provide
10 credit for time served for any portion of a probation or
11 community control term toward a subsequent term of probation
12 or community control. However, the court may not impose a
13 subsequent term of probation or community control which, when
14 combined with any amount of time served on preceding terms of
15 probation or community control for offenses pending before the
16 court for sentencing, would exceed the maximum penalty
17 allowable as provided in s. 775.082. Such term of
18 incarceration shall be served under applicable law or county
19 ordinance governing service of sentences in state or county
20 jurisdiction. This paragraph does not prohibit any other
21 sanction provided by law.

22 Section 7. For the purpose of incorporating the
23 amendment made by this act to section 948.06, Florida
24 Statutes, in a reference thereto, subsection (9) of section
25 948.10, Florida Statutes, is reenacted to read:

26 948.10 Community control programs.--

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

30 Section 8. For the purpose of incorporating the
31 amendment made by this act to section 948.06, Florida

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1 Statutes, in a reference thereto, section 958.14, Florida

2 Statutes, is reenacted to read:

3 958.14 Violation of probation or community control
4 program.--A violation or alleged violation of probation or the
5 terms of a community control program shall subject the
6 youthful offender to the provisions of s. 948.06. However, no
7 youthful offender shall be committed to the custody of the
8 department for a substantive violation for a period longer
9 than the maximum sentence for the offense for which he or she
10 was found guilty, with credit for time served while
11 incarcerated, or for a technical or nonsubstantive violation
12 for a period longer than 6 years or for a period longer than
13 the maximum sentence for the offense for which he or she was
14 found guilty, whichever is less, with credit for time served
15 while incarcerated.

16 Section 9. (1) The Department of Corrections shall
17 coordinate preparation of a report on implementation of the
18 Anti-Murder Act and shall submit the report to the Governor,
19 the President of the Senate, and the Speaker of the House of
20 Representatives no later than February 1, 2008.

21 (2) The department shall convene the participation of,
22 and coordinate preparation of the report with, representatives
23 of:

24 (a) the Office of the State Courts Administrator on
25 behalf of the state courts system;

26 (b) the Florida Prosecuting Attorneys Association;

27 (c) the Florida Public Defender Association;

28 (d) Florida Association of Criminal Defense Lawyers;

29 and

30 (e) any other units of government, organizations, or
31 entities the department deems necessary.

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1 (3) At a minimum, the report shall identify any legal,
2 fiscal, or administrative impediments to full implementation
3 of this act and recommended any legislative action related to
4 implementation of this act.

5 Section 10. If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 invalidity does not affect other provisions or applications of
8 the act which can be given effect without the invalid
9 provision or application, and to this end the provisions of
10 this act are severable.

11 Section 11. This act shall take effect upon becoming a
12 law.

13
14

15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete everything before the enacting clause

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19 and insert:

20 An act relating to violent felony offenders;
21 providing a short title; creating s. 903.0351,
22 F.S.; prohibiting bail or other pretrial
23 release for specified violent felony offenders
24 of special concern and certain arrested persons
25 pending a probation or community control
26 violation hearing; providing exceptions;
27 amending s. 948.06, F.S.; providing
28 definitions; providing that certain alleged
29 violations of probation or community control by
30 violent felony offenders of special concern and
31 certain arrested persons require a hearing and

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1 require the alleged offenders to remain in
2 custody pending hearing; requiring findings by
3 the court and a decision on revocation of
4 probation or community control; creating s.
5 948.064, F.S.; providing for notification to
6 the criminal justice system of an offender's
7 status as a violent felony offender of special
8 concern or other specified offender; amending
9 s. 921.0024, F.S.; revising the worksheet
10 computations of the Criminal Punishment Code to
11 provide additional community sanction violation
12 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; requiring a report on implementation
22 of this act; providing for severability;
23 providing an effective date.

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