

Bill No. CS for SB 146

Barcode 943136

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Webster) 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 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; or

(b) A person arrested for a qualifying offense as defined in s. 948.06(8)(c).

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

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

8 948.06 Violation of probation or community control;
 9 revocation; modification; continuance; failure to pay
 10 restitution or cost of supervision.--

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

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1 bail. In determining the danger posed by the offender's or
2 probationer's release, the court may consider the nature and
3 circumstances of the violation and any new offenses charged;
4 the offender's or probationer's past and present conduct,
5 including convictions of crimes; any record of arrests without
6 conviction for crimes involving violence or sexual crimes; any
7 other evidence of allegations of unlawful sexual conduct or
8 the use of violence by the offender or probationer; the
9 offender's or probationer's family ties, length of residence
10 in the community, employment history, and mental condition;
11 his or her history and conduct during the probation or
12 community control supervision from which the violation arises
13 and any other previous supervisions, including disciplinary
14 records of previous incarcerations; the likelihood that the
15 offender or probationer will engage again in a criminal course
16 of conduct; the weight of the evidence against the offender or
17 probationer; and any other facts the court considers relevant.
18 The court, as soon as is practicable, shall give the
19 probationer or offender an opportunity to be fully heard on
20 his or her behalf in person or by counsel. After the ~~such~~
21 hearing, the court shall make findings of fact and forward the
22 findings to the court that ~~which~~ granted the probation or
23 community control and to the probationer or offender or his or
24 her attorney. The findings of fact by the hearing court are
25 binding on the court that ~~which~~ granted the probation or
26 community control. Upon the probationer or offender being
27 brought before it, the court that ~~which~~ granted the probation
28 or community control may revoke, modify, or continue the
29 probation or community control or may place the probationer
30 into community control as provided in this section. However,
31 if any violation of felony probation or community control

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1 other than a failure to pay costs or fines or make restitution
 2 payments is alleged to have been committed by a violent felony
 3 offender of special concern, as defined in this section, or a
 4 person who has been arrested for a qualifying offense, the
 5 probationer or offender shall not be released and shall not be
 6 admitted to bail, but shall be brought before the court that
 7 granted the probation or community control.

8 (8)(a) In addition to complying with the provisions of
 9 subsections (1)-(7), this subsection provides further
 10 requirements regarding a probationer or offender in community
 11 control who is a violent felony offender of special concern.
 12 The provisions of this subsection shall control over any
 13 conflicting provisions in subsections (1)-(7). For purposes of
 14 this subsection, the term "convicted" means a determination of
 15 guilt which is the result of a trial or the entry of a plea of
 16 guilty or nolo contendere, regardless of whether adjudication
 17 is withheld.

18 (b) For purposes of this section and ss. 903.0351,
 19 948.064, and 921.0024, the term "violent felony offender of
 20 special concern" means a person who is on:

21 1. Felony probation or community control related to
 22 the commission of a qualifying offense committed on or after
 23 the effective date of this act;

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

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

31 4. Felony probation or community control and has

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

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

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

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

16 1. Kidnapping or attempted kidnapping under s. 787.01,
17 false imprisonment of a child under the age of 13 under s.
18 787.02(3), or luring or enticing a child under s.
19 787.025(2)(b) or (c).

20 2. Murder or attempted murder under s. 782.04,
21 attempted felony murder under s. 782.051, or manslaughter
22 under s. 782.07.

23 3. Aggravated battery or attempted aggravated battery
24 under s. 784.045.

25 4. Sexual battery or attempted sexual battery under s.
26 794.011(2), (3), (4), or (8)(b) or (c).

27 5. Lewd or lascivious battery or attempted lewd or
28 lascivious battery under s. 800.04(4), lewd or lascivious
29 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
30 conduct under s. 800.04(6)(b), or lewd or lascivious
31 exhibition under s. 800.04(7)(c).

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1 6. Robbery or attempted robbery under s. 812.13,
 2 carjacking or attempted carjacking under s. 812.133, or home
 3 invasion robbery or attempted home invasion robbery under s.
 4 812.135.

5 7. Lewd or lascivious offense upon or in the presence
 6 of an elderly or disabled person or attempted lewd or
 7 lascivious offense upon or in the presence of an elderly or
 8 disabled person under s. 825.1025.

9 8. Sexual performance by a child or attempted sexual
 10 performance by a child under s. 827.071.

11 9. Computer pornography under s. 847.0135(2) or (3),
 12 transmission of child pornography under s. 847.0137, or
 13 selling or buying of minors under s. 847.0145.

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

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

16 12. Any burglary offense or attempted burglary offense
 17 that is either a first-degree felony or second-degree felony
 18 under s. 810.02(2) or (3).

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

20 14. Aggravated assault under s. 784.021.

21 15. Aggravated stalking under s. 784.048(3), (4), (5),
 22 or (7).

23 16. Aircraft piracy under s. 860.16.

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

26 18. Treason under s. 876.32.

27 19. Any offense committed in another jurisdiction
 28 which would be an offense listed in this paragraph if that
 29 offense had been committed in this state.

30 (d) In the case of an alleged violation of probation
 31 or community control by a violent felony offender of special

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1 concern, other than a failure to pay costs, fines, or
2 restitution, or a person who has been arrested for a
3 qualifying offense, the alleged violator shall remain in
4 custody pending the resolution of the probation or community
5 control violation. The court shall not dismiss the probation
6 or community control violation warrant pending against a
7 violent felony offender of special concern or a person
8 arrested for a qualifying offense without holding a recorded
9 violation-of-probation hearing at which both the state and the
10 offender are represented.

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

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

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

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

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

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

31 2. Decide whether to revoke the probation or community

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1 control.

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

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

12 Section 4. Section 948.064, Florida Statutes, is
13 created to read:

14 948.064 Notification of status as a violent felony
15 offender of special concern.--

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

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

28 (a) State and national criminal history information;

29 (b) All criminal justice information available in the
30 Florida Crime Information Center and the National Crime
31 Information Center; and

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1 sanction violation, unless any of the following apply:†

2 ~~however,~~

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

8 2. If the community sanction violation is committed by
9 a violent felony offender of special concern as defined in s.
10 948.06:

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

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

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

19 b. Twenty-four (24) community sanction violation
20 points are assessed for the violation and for each successive
21 violation of felony probation or community control where the
22 violation includes a new felony conviction.

23
24 Multiple counts of community sanction violations before the
25 sentencing court shall not be a basis for multiplying the
26 assessment of community sanction violation points.

27
28 Prior serious felony points: If the offender has a primary
29 offense or any additional offense ranked in level 8, level 9,
30 or level 10, and one or more prior serious felonies, a single
31 assessment of thirty (30) ~~30~~ points shall be added. For

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1 purposes of this section, a prior serious felony is an offense
 2 in the offender's prior record that is ranked in level 8,
 3 level 9, or level 10 under s. 921.0022 or s. 921.0023 and for
 4 which the offender is serving a sentence of confinement,
 5 supervision, or other sanction or for which the offender's
 6 date of release from confinement, supervision, or other
 7 sanction, whichever is later, is within 3 years before the
 8 date the primary offense or any additional offense was
 9 committed.

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

22

23 Possession of a firearm, semiautomatic firearm, or machine
 24 gun: If the offender is convicted of committing or attempting
 25 to commit any felony other than those enumerated in s.
 26 775.087(2) while having in his or her possession: a firearm as
 27 defined in s. 790.001(6), an additional eighteen (18) ~~18~~
 28 sentence points are assessed; or if the offender is convicted
 29 of committing or attempting to commit any felony other than
 30 those enumerated in s. 775.087(3) while having in his or her
 31 possession a semiautomatic firearm as defined in s. 775.087(3)

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1 or a machine gun as defined in s. 790.001(9), an additional
2 twenty-five (25) ~~25~~ sentence points are assessed.

3

4 Sentencing multipliers:

5

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

13

14 Law enforcement protection: If the primary offense is a
15 violation of the Law Enforcement Protection Act under s.
16 775.0823(2), the subtotal sentence points are multiplied by
17 2.5. If the primary offense is a violation of s. 775.0823(3),
18 (4), (5), (6), (7), or (8), the subtotal sentence points are
19 multiplied by 2.0. If the primary offense is a violation of s.
20 784.07(3) or s. 775.0875(1), or of the Law Enforcement
21 Protection Act under s. 775.0823(9) or (10), the subtotal
22 sentence points are multiplied by 1.5.

23

24 Grand theft of a motor vehicle: If the primary offense is
25 grand theft of the third degree involving a motor vehicle and
26 in the offender's prior record, there are three or more grand
27 thefts of the third degree involving a motor vehicle, the
28 subtotal sentence points are multiplied by 1.5.

29

30 Offense related to a criminal street gang: If the offender is
31 convicted of the primary offense and committed that offense

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1 for the purpose of benefiting, promoting, or furthering the
2 interests of a criminal street gang as prohibited under s.
3 874.04, the subtotal sentence points are multiplied by 1.5.

4

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

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

17 948.012 Split sentence of probation or community
18 control and imprisonment.--

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

23 (b) If the offender does not meet the terms and
24 conditions of probation or community control, the court may
25 revoke, modify, or continue the probation or community control
26 as provided in s. 948.06. If the probation or community
27 control is revoked, the court may impose any sentence that it
28 could have imposed at the time the offender was placed on
29 probation or community control. The court may not provide
30 credit for time served for any portion of a probation or
31 community control term toward a subsequent term of probation

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

11 Section 7. For the purpose of incorporating the
 12 amendment made by this act to section 948.06, Florida
 13 Statutes, in a reference thereto, subsection (9) of section
 14 948.10, Florida Statutes, is reenacted to read:

15 948.10 Community control programs.--

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

19 Section 8. For the purpose of incorporating the
 20 amendment made by this act to section 948.06, Florida
 21 Statutes, in a reference thereto, section 958.14, Florida
 22 Statutes, is reenacted to read:

23 958.14 Violation of probation or community control
 24 program.--A violation or alleged violation of probation or the
 25 terms of a community control program shall subject the
 26 youthful offender to the provisions of s. 948.06. However, no
 27 youthful offender shall be committed to the custody of the
 28 department for a substantive violation for a period longer
 29 than the maximum sentence for the offense for which he or she
 30 was found guilty, with credit for time served while
 31 incarcerated, or for a technical or nonsubstantive violation

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

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

10 (2) The department shall convene the participation of,
11 and coordinate preparation of the report with, representatives
12 of:

13 (a) the Office of the State Courts Administrator on
14 behalf of the state courts system;

15 (b) the Florida Prosecuting Attorneys Association;

16 (c) the Florida Public Defender Association;

17 (d) Florida Association of Criminal Defense Lawyers;

18 and

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

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

25 Section 10. If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 invalidity does not affect other provisions or applications of
28 the act which can be given effect without the invalid
29 provision or application, and to this end the provisions of
30 this act are severable.

31 Section 11. This act shall take effect upon becoming a

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1 law.

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

5 And the title is amended as follows:

6 Delete everything before the enacting clause

7

8 and insert:

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A bill to be entitled

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An act relating to violent felony offenders;

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providing a short title; creating s. 903.0351,

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F.S.; prohibiting bail or other pretrial

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release for specified violent felony offenders

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of special concern without a hearing and

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certain arrested person pending a probation or

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community control violation hearing; providing

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exceptions; amending s. 948.06, F.S.; providing

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definitions; providing that certain alleged

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violations of probation or community control by

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violent felony offenders of special concern

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require a hearing and require the alleged

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offenders to remain in custody pending hearing;

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requiring findings by the court and a decision

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on revocation of probation or community

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control; creating s. 948.064, F.S.; providing

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for notification to the criminal justice system

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of an offender's status as a violent felony

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offender of special concern; amending s.

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921.0024, F.S.; revising the worksheet

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computations of the Criminal Punishment Code to

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provide additional community sanction violation

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1 points for certain community sanction
2 violations committed by violent felony
3 offenders of special concern; reenacting ss.
4 948.012(2)(b), 948.10(9), and 958.14, F.S.,
5 relating to split sentence of probation or
6 community control and imprisonment, community
7 control programs, and violation of probation or
8 community control, respectively, to incorporate
9 the amendment to s. 948.06, F.S., in references
10 thereto; requiring a report on implementation
11 of this act; providing for severability;
12 providing an effective date.

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