

By the Committee on Criminal Justice; and Senator Dockery

591-1860-07

1 A bill to be entitled
2 An act relating to violent felony offenders;
3 providing a short title; creating s. 903.0351,
4 F.S.; prohibiting bail or other pretrial
5 release for specified violent felony offenders
6 of special concern without a hearing; amending
7 s. 948.06, F.S.; providing definitions;
8 providing that certain alleged violations of
9 probation or community control by violent
10 felony offenders of special concern require
11 hearings and require the alleged offenders to
12 remain in custody pending hearing; providing
13 requirements for such hearings; creating s.
14 948.064, F.S.; providing for notification to
15 the criminal justice system of an offender's
16 status as a violent felony offender of special
17 concern; amending s. 921.0024, F.S.; revising
18 the worksheet computations of the Criminal
19 Punishment Code to provide additional community
20 sanction violation points for certain community
21 sanction violations committed by violent felony
22 offenders of special concern; reenacting ss.
23 948.012(2)(b), 948.10(9), and 958.14, F.S.,
24 relating to split sentence of probation or
25 community control and imprisonment, community
26 control programs, and violation of probation or
27 community control, respectively, to incorporate
28 the amendment to s. 948.06, F.S., in references
29 thereto; providing for severability; providing
30 an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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

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

7 903.0351 Violent felony offenders of special concern;
8 pretrial release hearing required.--A violent felony offender
9 of special concern, as defined in s. 948.06, who has been
10 arrested for an alleged violation of probation or community
11 control shall not be granted bail or any other form of
12 pretrial release prior to the resolution of the probation or
13 community control violation hearing, unless the violation
14 charge or arrest is based solely on the offender's failure to
15 pay costs or fines or make restitution payments.

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

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

22 (4) Notwithstanding any other provision of this
23 section, a probationer or an offender in community control who
24 is arrested for violating his or her probation or community
25 control in a material respect may be taken before the court in
26 the county or circuit in which the probationer or offender was
27 arrested. That court shall advise him or her of ~~the~~ such
28 charge of a violation and, if such charge is admitted, shall
29 cause him or her to be brought before the court ~~that~~ which
30 granted the probation or community control. If ~~the~~ such
31 violation is not admitted by the probationer or offender, the

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

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

18 (8)(a) In addition to complying with the provisions of
19 subsections (1)-(7), this subsection provides further
20 requirements regarding a probationer or offender in community
21 control who is a violent felony offender of special concern.
22 The provisions of this subsection shall control over any
23 conflicting provisions in subsections (1)-(7).

24 (b) For purposes of this subsection and ss. 903.0351,
25 948.064, and 921.0024, the term "violent felony offender of
26 special concern" means a person who is on:

27 1. Probation or community control related to the
28 commission of a qualifying offense committed on or after the
29 effective date of this act;

30 2. Probation or community control for any offense
31 committed on or after the effective date of this act, and has

1 previously been convicted of or had adjudication withheld for
2 a qualifying offense;

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

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

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

16 6. Probation or community control and has previously
17 been found by a court to be a sexual predator under s. 775.21
18 and has committed a qualifying offense on or after the
19 effective date of this act.

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

22 1. Kidnapping or attempted kidnapping under s. 787.01,
23 false imprisonment of a child under the age of 13 under s.
24 787.02(3), or luring or enticing a child under s.
25 787.025(2)(b) or (c).

26 2. Murder or attempted murder under s. 782.04,
27 attempted felony murder under s. 782.051, or manslaughter
28 under s. 782.07.

29 3. Aggravated battery or attempted aggravated battery
30 under s. 784.045.

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

3 5. Lewd or lascivious battery or attempted lewd or
4 lascivious battery under s. 800.04(4), lewd or lascivious
5 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
6 conduct under s. 800.04(6)(b), or lewd or lascivious
7 exhibition under s. 800.04(7)(c).

8 6. Robbery or attempted robbery under s. 812.13,
9 carjacking or attempted carjacking under s. 812.133, or home
10 invasion robbery or attempted home invasion robbery under s.
11 812.135.

12 7. Lewd or lascivious offense upon or in the presence
13 of an elderly or disabled person or attempted lewd or
14 lascivious offense upon or in the presence of an elderly or
15 disabled person under s. 825.1025.

16 8. Sexual performance by a child or attempted sexual
17 performance by a child under s. 827.071.

18 9. Computer pornography under s. 847.0135(2) or (3),
19 transmission of child pornography under s. 847.0137, or
20 selling or buying of minors under s. 847.0145.

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

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

23 12. Any burglary offense or attempted burglary offense
24 that is either a first-degree felony or second-degree felony
25 under s. 810.02(2) or (3).

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

27 14. Aggravated assault under s. 784.021.

28 15. Aggravated stalking under s. 784.048(3), (4), (5),
29 or (7).

30 16. Aircraft piracy under s. 860.16.
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1 17. Unlawful throwing, placing, or discharging of a
2 destructive device or bomb under s. 790.161(2), (3), or (4).

3 18. Treason under s. 876.32.

4 19. Any offense committed in another jurisdiction
5 which would be an offense listed in this paragraph if that
6 offense had been committed in this state.

7 (d) In the case of an alleged violation of probation
8 or community control by a violent felony offender of special
9 concern, other than a failure to pay costs, fines, or
10 restitution, the offender shall remain in custody pending the
11 resolution of the probation or community control violation.
12 The court shall not dismiss the probation or community control
13 violation warrant pending against a violent felony offender of
14 special concern without holding a recorded
15 violation-of-probation hearing at which both the state and the
16 offender are represented.

17 (e) If the court, after conducting the hearing
18 required by paragraph (d), determines that a violent felony
19 offender of special concern has committed a violation of
20 probation or community control other than a failure to pay
21 costs, fines, or restitution, the court shall decide whether
22 to revoke the probation or community control.

23 1. If the court determines, by a preponderance of the
24 evidence, that a violent felony offender of special concern
25 poses a danger to the community, the court shall revoke
26 probation or community control and shall sentence the offender
27 under s. 921.0024 up to the statutory maximum, or longer if
28 permitted by law.

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

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1 a. The nature and circumstances of the violation and
2 any new offenses charged.

3 b. The offender's past and present conduct, including
4 criminal convictions.

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

7 d. The offender's amenability to nonincarcerative
8 sanctions based on his or her history and conduct during the
9 probation or community control supervision from which the
10 violation hearing arises and any other previous supervisions,
11 including disciplinary records of previous incarcerations.

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

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

15 g. Any other facts the court considers relevant.

16 3. The court must enter a written order in support of
17 its finding.

18 Section 4. Section 948.064, Florida Statutes, is
19 created to read:

20 948.064 Notification of status as a violent felony
21 offender of special concern.--

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

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1 (2) The county jail in the county where the arrested
2 person is booked shall insure that state and national criminal
3 history information and all criminal justice information
4 available in the Florida Crime Information Center and the
5 National Crime Information Center is provided to the court at
6 the time of the first appearance.

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 Section 5. Paragraph (b) of subsection (1) of section
13 921.0024, Florida Statutes, is amended to read:

14 921.0024 Criminal Punishment Code; worksheet
15 computations; scoresheets.--

16 (1)

17
18 (b) WORKSHEET KEY:

19
20 Legal status points are assessed when any form of legal status
21 existed at the time the offender committed an offense before
22 the court for sentencing. Four (4) sentence points are
23 assessed for an offender's legal status.

24
25 Community sanction violation points are assessed when a
26 community sanction violation is before the court for
27 sentencing. Six (6) sentence points are assessed for each
28 community sanction violation, and each successive community
29 sanction violation, unless any of the following apply:†
30 ~~however,~~
31

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

6 2. If the community sanction violation is committed by
7 a violent felony offender of special concern as defined in s.
8 948.06, but does not include a new felony conviction, twelve
9 (12) community sanction violation points are assessed for the
10 violation and for each successive community sanction violation
11 not involving a new felony conviction.

12 3. If the community sanction violation is committed by
13 a violent felony offender of special concern as defined in s.
14 948.06, and includes a new felony conviction before the
15 sentencing court, twenty-four (24) community sanction
16 violation points are assessed for the violation and for each
17 successive community sanction violation involving a new felony
18 conviction.

19
20 Multiple counts of community sanction violations before the
21 sentencing court shall not be a basis for multiplying the
22 assessment of community sanction violation points.

23
24 Prior serious felony points: If the offender has a primary
25 offense or any additional offense ranked in level 8, level 9,
26 or level 10, and one or more prior serious felonies, a single
27 assessment of thirty (30) ~~30~~ points shall be added. For
28 purposes of this section, a prior serious felony is an offense
29 in the offender's prior record that is ranked in level 8,
30 level 9, or level 10 under s. 921.0022 or s. 921.0023 and for
31 which the offender is serving a sentence of confinement,

1 supervision, or other sanction or for which the offender's
2 date of release from confinement, supervision, or other
3 sanction, whichever is later, is within 3 years before the
4 date the primary offense or any additional offense was
5 committed.

6
7 Prior capital felony points: If the offender has one or more
8 prior capital felonies in the offender's criminal record,
9 points shall be added to the subtotal sentence points of the
10 offender equal to twice the number of points the offender
11 receives for the primary offense and any additional offense. A
12 prior capital felony in the offender's criminal record is a
13 previous capital felony offense for which the offender has
14 entered a plea of nolo contendere or guilty or has been found
15 guilty; or a felony in another jurisdiction which is a capital
16 felony in that jurisdiction, or would be a capital felony if
17 the offense were committed in this state.

18
19 Possession of a firearm, semiautomatic firearm, or machine
20 gun: If the offender is convicted of committing or attempting
21 to commit any felony other than those enumerated in s.
22 775.087(2) while having in his or her possession: a firearm as
23 defined in s. 790.001(6), an additional eighteen (18) ~~18~~
24 sentence points are assessed; or if the offender is convicted
25 of committing or attempting to commit any felony other than
26 those enumerated in s. 775.087(3) while having in his or her
27 possession a semiautomatic firearm as defined in s. 775.087(3)
28 or a machine gun as defined in s. 790.001(9), an additional
29 twenty-five (25) ~~25~~ sentence points are assessed.

30
31 Sentencing multipliers:

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2 Drug trafficking: If the primary offense is drug trafficking
3 under s. 893.135, the subtotal sentence points are multiplied,
4 at the discretion of the court, for a level 7 or level 8
5 offense, by 1.5. The state attorney may move the sentencing
6 court to reduce or suspend the sentence of a person convicted
7 of a level 7 or level 8 offense, if the offender provides
8 substantial assistance as described in s. 893.135(4).
9
10 Law enforcement protection: If the primary offense is a
11 violation of the Law Enforcement Protection Act under s.
12 775.0823(2), the subtotal sentence points are multiplied by
13 2.5. If the primary offense is a violation of s. 775.0823(3),
14 (4), (5), (6), (7), or (8), the subtotal sentence points are
15 multiplied by 2.0. If the primary offense is a violation of s.
16 784.07(3) or s. 775.0875(1), or of the Law Enforcement
17 Protection Act under s. 775.0823(9) or (10), the subtotal
18 sentence points are multiplied by 1.5.
19
20 Grand theft of a motor vehicle: If the primary offense is
21 grand theft of the third degree involving a motor vehicle and
22 in the offender's prior record, there are three or more grand
23 thefts of the third degree involving a motor vehicle, the
24 subtotal sentence points are multiplied by 1.5.
25
26 Offense related to a criminal street gang: If the offender is
27 convicted of the primary offense and committed that offense
28 for the purpose of benefiting, promoting, or furthering the
29 interests of a criminal street gang as prohibited under s.
30 874.04, the subtotal sentence points are multiplied by 1.5.
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1 Domestic violence in the presence of a child: If the offender
2 is convicted of the primary offense and the primary offense is
3 a crime of domestic violence, as defined in s. 741.28, which
4 was committed in the presence of a child under 16 years of age
5 who is a family or household member as defined in s. 741.28(3)
6 with the victim or perpetrator, the subtotal sentence points
7 are multiplied by 1.5.

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

13 948.012 Split sentence of probation or community
14 control and imprisonment.--

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

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

1 | court for sentencing, would exceed the maximum penalty
2 | allowable as provided in s. 775.082. Such term of
3 | incarceration shall be served under applicable law or county
4 | ordinance governing service of sentences in state or county
5 | jurisdiction. This paragraph does not prohibit any other
6 | sanction provided by law.

7 | Section 7. For the purpose of incorporating the
8 | amendment made by this act to section 948.06, Florida
9 | Statutes, in a reference thereto, subsection (9) of section
10 | 948.10, Florida Statutes, is reenacted to read:

11 | 948.10 Community control programs.--

12 | (9) Procedures governing violations of community
13 | control shall be the same as those described in s. 948.06 with
14 | respect to probation.

15 | Section 8. For the purpose of incorporating the
16 | amendment made by this act to section 948.06, Florida
17 | Statutes, in a reference thereto, section 958.14, Florida
18 | Statutes, is reenacted to read:

19 | 958.14 Violation of probation or community control
20 | program.--A violation or alleged violation of probation or the
21 | terms of a community control program shall subject the
22 | youthful offender to the provisions of s. 948.06. However, no
23 | youthful offender shall be committed to the custody of the
24 | department for a substantive violation for a period longer
25 | than the maximum sentence for the offense for which he or she
26 | was found guilty, with credit for time served while
27 | incarcerated, or for a technical or nonsubstantive violation
28 | for a period longer than 6 years or for a period longer than
29 | the maximum sentence for the offense for which he or she was
30 | found guilty, whichever is less, with credit for time served
31 | while incarcerated.

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

7 Section 10. This act shall take effect upon becoming a
8 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 146

- 4 1. Added the following qualifying offenses:
- 5 - Attempted kidnapping, attempted carjacking,
6 attempted home invasion robbery, attempted lewd or
7 lascivious offense upon or in the presence of an
8 elderly or disabled person.
 - 9 - Custodial sexual battery s. 794.011(8)(b) and (c) .
 - 10 - Lewd or lascivious conduct under s. 800.04(6)(b),
11 F.S., and lewd or lascivious exhibition under
12 800.04(7)(c), F.S. These are lewd and lascivious
13 violations committed by an adult upon a minor. The
14 bill only includes lewd and lascivious battery,
15 whether committed by either a minor or an adult.
- 16 2. Deleted the misdemeanor offense of luring and enticing a
17 child under s. 787.025(2)(a).
- 18 3. Added new section creating s. 948.064, F.S., which
19 establishes responsibilities for notifying the court of
20 an offender's status as a violent felony offender of
21 special concern.
- 22 4. Community Sanction Violation Points:
- 23 - Increased the community sanction violation points
24 assessed against a violent felony offender of
25 special concern who commits a technical or
26 misdemeanor violation to 12 (from 9 in the bill and
27 6 under current law).
 - 28 - Increased the community sanction violation points
29 assessed against a violent felony offender of
30 special concern who commits a new felony offense to
31 24 (from 18 in the bill and 12 under current law).
5. Provided for possibility of sentencing over the maximum
sentence for the offense if the total points exceed the
maximum sentence.
6. Added a severability clause so that if any part of the
act is declared invalid, the remainder will still be
effective.
7. Changed effective date from July 1 to "upon becoming a
law."