

By Senator Lynn

7-70-07

1                                   A bill to be entitled  
2           An act relating to sexual offenders and  
3           habitual violent felony offenders; creating s.  
4           903.0351, F.S.; denying bail or any form of  
5           pretrial release to sexual offenders or  
6           habitual violent felony offenders under certain  
7           circumstances; amending s. 948.06, F.S.;  
8           requiring that a sexual offender or habitual  
9           violent felony offender remain in custody  
10          pending a hearing on the probation or community  
11          control violation; requiring that the hearing  
12          determine the nature and probability of any  
13          danger that the offender poses to the community  
14          before release of the violator following a  
15          violation of probation or community control;  
16          providing criteria by which to determine risk  
17          posed by a sexual offender or habitual violent  
18          felony offender; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

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22           Section 1. Section 903.0351, Florida Statutes, is  
23 created to read:

24           903.0351 Sexual offenders and habitual violent felony  
25 offenders; bail hearing required.--A sexual offender, as  
26 defined in s. 943.0435(1), or a habitual violent felony  
27 offender, as defined in s. 775.084(1), who has been arrested  
28 for an alleged violation of probation or community control may  
29 not be granted bail or any form of pretrial release before the  
30 resolution of the hearing on the violation of probation or

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1 community control unless the charge or arrest is based solely  
2 on the offender's failure to pay costs, fines, or restitution.

3 Section 2. Subsection (4) of section 948.06, Florida  
4 Statutes, is amended, and subsection (8) is added to that  
5 section, to read:

6 948.06 Violation of probation or community control;  
7 revocation; modification; continuance; failure to pay  
8 restitution or cost of supervision.--

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

1 | circumstances of the violation and any new offenses charged;  
2 | the offender's or probationer's past and present conduct,  
3 | including convictions of crimes; any record of arrests without  
4 | conviction for crimes involving violence or sexual crimes; any  
5 | other evidence of allegations of unlawful sexual conduct or  
6 | the use of violence by the offender or probationer; the  
7 | offender's or probationer's family ties, length of residence  
8 | in the community, employment history, and mental condition;  
9 | his or her history and conduct during the probation or  
10 | community control supervision from which the violation arises  
11 | and any other previous supervisions, including disciplinary  
12 | records of previous incarcerations; the likelihood that the  
13 | offender or probationer will engage again in a criminal course  
14 | of conduct; the weight of the evidence against the offender or  
15 | probationer; and any other facts the court considers relevant.  
16 | The court, as soon as is practicable, shall give the  
17 | probationer or offender an opportunity to be fully heard on  
18 | his or her behalf in person or by counsel. After ~~the~~ such  
19 | hearing, the court shall make findings of fact and forward the  
20 | findings to the court ~~that~~ which granted the probation or  
21 | community control and to the probationer or offender or his or  
22 | her attorney. The findings of fact by the hearing court are  
23 | binding on the court ~~that~~ which granted the probation or  
24 | community control. Upon the probationer or offender being  
25 | brought before it, the court which granted the probation or  
26 | community control may revoke, modify, or continue the  
27 | probation or community control or may place the probationer  
28 | into community control as provided in this section. However,  
29 | if any violation other than a failure to pay costs, fines, or  
30 | restitution is alleged to have been committed by a sexual  
31 | offender as defined in s. 943.0435(1) or by a habitual violent

1 felony offender as defined in s. 775.084(1), the probationer  
2 or offender may not be released and may not be admitted to  
3 bail but shall be brought before the court that granted the  
4 probation or community control.

5 (8)(a) In addition to the provisions of subsections  
6 (1)-(7), this subsection provides additional requirements  
7 regarding a probationer or offender in community control who  
8 is a sexual offender, as defined in s. 943.0435(1), or a  
9 habitual violent felony offender, as defined in s. 775.084(1).  
10 The provisions of this subsection shall control over any  
11 conflicting provision in subsections (1)-(7).

12 (b) In the case of an alleged violation of probation  
13 or community control by a sexual offender or a habitual  
14 violent felony offender on any ground other than a failure to  
15 pay costs, fines, or restitution, the sexual offender or  
16 habitual violent felony offender shall remain in custody  
17 pending the resolution of the violation of probation or  
18 community control. The court may not dismiss the violation of  
19 probation or community control which is pending against the  
20 sexual offender or habitual violent felony offender without  
21 holding a recorded hearing at which the state and the offender  
22 are represented.

23 (c) If the court, after conducting the hearing,  
24 determines that the sexual offender or habitual violent felony  
25 offender has violated any nonmonetary term of probation or  
26 community control, the court must determine whether to revoke  
27 the offender's probation or community control.

28 1. If the court determines, by a preponderance of the  
29 evidence, that the sexual offender or habitual violent felony  
30 offender poses a danger to the community, the court shall  
31 revoke probation or community control and sentence the sexual

1 offender or habitual violent felony offender up to the  
2 statutory maximum.

3 2. In determining the danger to the community posed by  
4 the offender's release, the court may consider the nature and  
5 circumstances of the violation and any new offenses charged;  
6 the offender's past and present conduct, including convictions  
7 of crimes; the offender's family ties, length of residence in  
8 the community, employment history, and mental condition; the  
9 offender's amenability to nonincarcerative sanctions based on  
10 his or her history and conduct during the probation or  
11 community control supervision from which the violation hearing  
12 arises and on any other previous supervisions, including  
13 disciplinary records of previous incarcerations; the  
14 likelihood that the offender will engage again in a criminal  
15 course of conduct; the weight of the evidence against the  
16 offender; and any other facts the court considers relevant.

17 3. The court must enter a written order in support of  
18 its findings.

19 Section 3. This act shall take effect July 1, 2007.

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22 SENATE SUMMARY

23 Denies bail or any form of pretrial release to sexual  
24 offenders or habitual violent felony offenders under  
25 certain circumstances. Requires that a sexual offender or  
26 habitual violent felony offender remain in custody  
27 pending a hearing on the probation or community control  
28 violation. Requires that the hearing determine the nature  
29 and probability of any danger that the offender poses to  
30 the community before release of the violator following a  
31 violation of probation or community control. Provides  
criteria by which to determine risk posed by a sexual  
offender or habitual violent felony offender.