

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

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. This act may be cited as the "Anti-Murder Act."
 26 Section 2. Section 903.0351, Florida Statutes, is created
 27 to read:

28 903.0351 Violent felony offenders of special concern;
 29 pretrial release hearing required.--A violent felony offender of
 30 special concern, as defined in s. 948.06, who has been arrested
 31 for an alleged violation of probation or community control shall
 32 not be granted bail or any other form of pretrial release prior
 33 to the resolution of the probation or community control
 34 violation hearing, unless the violation charge or arrest is
 35 based solely on failure to pay costs, fines, or restitution
 36 payments.

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

40 948.06 Violation of probation or community control;
 41 revocation; modification; continuance; failure to pay
 42 restitution or cost of supervision.--

43 (4) Notwithstanding any other provision of this section, a
 44 probationer or an offender in community control who is arrested
 45 for violating his or her probation or community control in a
 46 material respect may be taken before the court in the county or
 47 circuit in which the probationer or offender was arrested. That
 48 court shall advise him or her of such charge of a violation and,
 49 if such charge is admitted, shall cause him or her to be brought
 50 before the court which granted the probation or community
 51 control. If such violation is not admitted by the probationer or
 52 offender, the court may commit him or her or release him or her
 53 with or without bail to await further hearing. However, if the
 54 probationer or offender is under supervision for any criminal
 55 offense proscribed in chapter 794, s. 800.04(4), (5), (6), s.

56 | 827.071, or s. 847.0145, or is a registered sexual predator or a
57 | registered sexual offender, or is under supervision for a
58 | criminal offense for which he or she would meet the registration
59 | criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the
60 | effective date of those sections, the court must make a finding
61 | that the probationer or offender is not a danger to the public
62 | prior to release with or without bail. In determining the danger
63 | posed by the offender's or probationer's release, the court may
64 | consider the nature and circumstances of the violation and any
65 | new offenses charged; the offender's or probationer's past and
66 | present conduct, including convictions of crimes; any record of
67 | arrests without conviction for crimes involving violence or
68 | sexual crimes; any other evidence of allegations of unlawful
69 | sexual conduct or the use of violence by the offender or
70 | probationer; the offender's or probationer's family ties, length
71 | of residence in the community, employment history, and mental
72 | condition; his or her history and conduct during the probation
73 | or community control supervision from which the violation arises
74 | and any other previous supervisions, including disciplinary
75 | records of previous incarcerations; the likelihood that the
76 | offender or probationer will engage again in a criminal course
77 | of conduct; the weight of the evidence against the offender or
78 | probationer; and any other facts the court considers relevant.
79 | The court, as soon as is practicable, shall give the probationer
80 | or offender an opportunity to be fully heard on his or her
81 | behalf in person or by counsel. After such hearing, the court
82 | shall make findings of fact and forward the findings to the
83 | court which granted the probation or community control and to

84 the probationer or offender or his or her attorney. The findings
85 of fact by the hearing court are binding on the court which
86 granted the probation or community control. Upon the probationer
87 or offender being brought before it, the court which granted the
88 probation or community control may revoke, modify, or continue
89 the probation or community control or may place the probationer
90 into community control as provided in this section. However, if
91 any violation other than a failure to pay costs, fines, or
92 restitution payments is alleged to have been committed by a
93 violent felony offender of special concern, as defined in this
94 section, the probationer or offender shall not be released and
95 shall not be admitted to bail, but shall be brought before the
96 court that granted the probation or community control.

97 (8) (a) In addition to complying with the provisions of
98 subsections (1)-(7), a probationer or offender in community
99 control who is a violent felony offender of special concern
100 shall comply with this subsection. The provisions of this
101 subsection shall control over any conflicting provisions in
102 subsections (1)-(7).

103 (b) For purposes of this section and ss. 903.0351 and
104 921.0024, the term "violent felony offender of special concern"
105 means a person who is on:

106 1. Probation or community control related to the
107 commission of a qualifying offense committed on or after July 1,
108 2007;

109 2. Probation or community control for any offense
110 committed on or after July 1, 2007, and has previously been

111 convicted of or had adjudication withheld for a qualifying
 112 offense;

113 3. Probation or community control for any offense
 114 committed on or after July 1, 2007, and is found to have
 115 violated that probation or community control by committing a
 116 qualifying offense;

117 4. Probation or community control and has previously been
 118 found by a court to be a habitual violent felony offender as
 119 defined in s. 775.084(1)(b) and has committed a qualifying
 120 offense on or after July 1, 2007;

121 5. Probation or community control and has previously been
 122 found by a court to be a three-time violent felony offender as
 123 defined in s. 775.084(1)(c) and has committed a qualifying
 124 offense on or after July 1, 2007; or

125 6. Probation or community control and has previously been
 126 found by a court to be a sexual predator under s. 775.21 and has
 127 committed a qualifying offense on or after July 1, 2007.

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

130 1. Kidnapping or attempted kidnapping under s. 787.01,
 131 false imprisonment of a child under the age of 13 under s.
 132 787.02(3), or luring or enticing a child under s. 787.025.

133 2. Murder or attempted murder under s. 782.04, attempted
 134 felony murder under s. 782.051, or manslaughter under s. 782.07.

135 3. Aggravated battery or attempted aggravated battery
 136 under s. 784.045.

137 4. Sexual battery or attempted sexual battery under s.
 138 794.011(2), (3), or (4).

- 139 5. Lewd or lascivious battery or attempted lewd or
- 140 lascivious battery under s. 800.04(4) or lewd or lascivious
- 141 molestation under s. 800.04(5) (b) .
- 142 6. Robbery or attempted robbery under s. 812.13,
- 143 carjacking under s. 812.133, or home invasion robbery under s.
- 144 812.135.
- 145 7. Lewd or lascivious offense upon or in the presence of
- 146 an elderly or disabled person or attempted lewd or lascivious
- 147 offense upon or in the presence of an elderly or disabled person
- 148 under s. 825.1025.
- 149 8. Sexual performance by a child or attempted sexual
- 150 performance by a child under s. 827.071.
- 151 9. Computer pornography under s. 847.0135(2) or (3),
- 152 transmission of child pornography under s. 847.0137, or selling
- 153 or buying of minors under s. 847.0145.
- 154 10. Poisoning food or water under s. 859.01.
- 155 11. Abuse of a dead human body under s. 872.06.
- 156 12. Any burglary offense or attempted burglary offense
- 157 that is either a first or second degree felony under s.
- 158 810.02(2) or (3).
- 159 13. Arson or attempted arson under s. 806.01(1).
- 160 14. Aggravated assault under s. 784.021.
- 161 15. Aggravated stalking under s. 784.048(3), (4), (5), or
- 162 (7).
- 163 16. Aircraft piracy under s. 860.16.
- 164 17. Unlawful throwing, placing, or discharging of a
- 165 destructive device or bomb under s. 790.161(2), (3), or (4).
- 166 18. Treason under s. 876.32.

167 19. Any offense committed in another jurisdiction that
168 would be an offense listed in this paragraph if that offense had
169 been committed in this state.

170 (d) In the case of an alleged violation of probation or
171 community control by a violent felony offender of special
172 concern, other than a failure to pay costs, fines, or
173 restitution, the offender shall remain in custody pending the
174 resolution of the probation or community control violation. The
175 court shall not dismiss the probation or community control
176 violation warrant pending against a violent felony offender of
177 special concern without holding a recorded violation of
178 probation hearing at which both the state and the offender are
179 represented.

180 (e) If the court, after conducting the hearing required by
181 paragraph (d), determines that a violent felony offender of
182 special concern has committed a violation of probation or
183 community control other than a failure to pay costs, fines, or
184 restitution, the court shall decide whether to revoke the
185 probation or community control.

186 1. If the court determines, by a preponderance of the
187 evidence, that a violent felony offender of special concern
188 poses a danger to the community, the court shall revoke
189 probation or community control and shall sentence the offender
190 under s. 921.0024 up to the statutory maximum.

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

193 a. The nature and circumstances of the violation and any
194 new offenses charged.

195 b. The offender's past and present conduct, including
 196 criminal convictions.

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

199 d. The offender's amenability to nonincarcerative
 200 sanctions based on his or her history and conduct during the
 201 probation or community control supervision from which the
 202 violation hearing arises and any other previous supervisions,
 203 including disciplinary records of previous incarcerations.

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

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

207 g. Any other facts the court considers relevant.

208 3. The court must enter a written order in support of its
 209 finding.

210 Section 4. Paragraph (b) of subsection (1) of section
 211 921.0024, Florida Statutes, is amended to read:

212 921.0024 Criminal Punishment Code; worksheet computations;
 213 scoresheets.--

214 (1)

215 (b) WORKSHEET KEY:

216
 217 Legal status points are assessed when any form of legal status
 218 existed at the time the offender committed an offense before the
 219 court for sentencing. Four (4) sentence points are assessed for
 220 an offender's legal status.

221

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

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

232 2. If the community sanction violation is committed by a
 233 violent felony offender of special concern as defined in s.
 234 948.06, but does not include a new felony conviction, nine (9)
 235 community sanction violation points are assessed for the
 236 violation and for each successive community sanction violation
 237 not involving a new felony conviction.

238 3. If the community sanction violation is committed by a
 239 violent felony offender of special concern as defined in s.
 240 948.06, and includes a new felony conviction before the
 241 sentencing court, eighteen (18) community sanction violation
 242 points are assessed for the violation and for each successive
 243 community sanction violation involving a new felony conviction.

244
 245 Multiple counts of community sanction violations before the
 246 sentencing court shall not be a basis for multiplying the
 247 assessment of community sanction violation points.
 248

249 Prior serious felony points: If the offender has a primary
 250 offense or any additional offense ranked in level 8, level 9, or
 251 level 10, and one or more prior serious felonies, a single
 252 assessment of thirty (30) ~~30~~ points shall be added. For purposes
 253 of this section, a prior serious felony is an offense in the
 254 offender's prior record that is ranked in level 8, level 9, or
 255 level 10 under s. 921.0022 or s. 921.0023 and for which the
 256 offender is serving a sentence of confinement, supervision, or
 257 other sanction or for which the offender's date of release from
 258 confinement, supervision, or other sanction, whichever is later,
 259 is within 3 years before the date the primary offense or any
 260 additional offense was committed.

261
 262 Prior capital felony points: If the offender has one or more
 263 prior capital felonies in the offender's criminal record, points
 264 shall be added to the subtotal sentence points of the offender
 265 equal to twice the number of points the offender receives for
 266 the primary offense and any additional offense. A prior capital
 267 felony in the offender's criminal record is a previous capital
 268 felony offense for which the offender has entered a plea of nolo
 269 contendere or guilty or has been found guilty; or a felony in
 270 another jurisdiction which is a capital felony in that
 271 jurisdiction, or would be a capital felony if the offense were
 272 committed in this state.

273
 274 Possession of a firearm, semiautomatic firearm, or machine gun:
 275 If the offender is convicted of committing or attempting to
 276 commit any felony other than those enumerated in s. 775.087(2)

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277 while having in his or her possession: a firearm as defined in
278 s. 790.001(6), an additional eighteen (18) ~~18~~ sentence points
279 are assessed; or if the offender is convicted of committing or
280 attempting to commit any felony other than those enumerated in
281 s. 775.087(3) while having in his or her possession a
282 semiautomatic firearm as defined in s. 775.087(3) or a machine
283 gun as defined in s. 790.001(9), an additional twenty-five (25)
284 ~~25~~ sentence points are assessed.

285

286 Sentencing multipliers:

287

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

295

296 Law enforcement protection: If the primary offense is a
297 violation of the Law Enforcement Protection Act under s.
298 775.0823(2), the subtotal sentence points are multiplied by 2.5.
299 If the primary offense is a violation of s. 775.0823(3), (4),
300 (5), (6), (7), or (8), the subtotal sentence points are
301 multiplied by 2.0. If the primary offense is a violation of s.
302 784.07(3) or s. 775.0875(1), or of the Law Enforcement
303 Protection Act under s. 775.0823(9) or (10), the subtotal
304 sentence points are multiplied by 1.5.

305
 306 Grand theft of a motor vehicle: If the primary offense is grand
 307 theft of the third degree involving a motor vehicle and in the
 308 offender's prior record, there are three or more grand thefts of
 309 the third degree involving a motor vehicle, the subtotal
 310 sentence points are multiplied by 1.5.

311
 312 Offense related to a criminal street gang: If the offender is
 313 convicted of the primary offense and committed that offense for
 314 the purpose of benefiting, promoting, or furthering the
 315 interests of a criminal street gang as prohibited under s.
 316 874.04, the subtotal sentence points are multiplied by 1.5.

317
 318 Domestic violence in the presence of a child: If the offender is
 319 convicted of the primary offense and the primary offense is a
 320 crime of domestic violence, as defined in s. 741.28, which was
 321 committed in the presence of a child under 16 years of age who
 322 is a family or household member as defined in s. 741.28(3) with
 323 the victim or perpetrator, the subtotal sentence points are
 324 multiplied by 1.5.

325 Section 5. For the purpose of incorporating the amendment
 326 made by this act to section 948.06, Florida Statutes, in a
 327 reference thereto, paragraph (b) of subsection (2) of section
 328 948.012, Florida Statutes, is reenacted to read:

329 948.012 Split sentence of probation or community control
 330 and imprisonment.--

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

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

335 (b) If the offender does not meet the terms and conditions
336 of probation or community control, the court may revoke, modify,
337 or continue the probation or community control as provided in s.
338 948.06. If the probation or community control is revoked, the
339 court may impose any sentence that it could have imposed at the
340 time the offender was placed on probation or community control.
341 The court may not provide credit for time served for any portion
342 of a probation or community control term toward a subsequent
343 term of probation or community control. However, the court may
344 not impose a subsequent term of probation or community control
345 which, when combined with any amount of time served on preceding
346 terms of probation or community control for offenses pending
347 before the court for sentencing, would exceed the maximum
348 penalty allowable as provided in s. 775.082. Such term of
349 incarceration shall be served under applicable law or county
350 ordinance governing service of sentences in state or county
351 jurisdiction. This paragraph does not prohibit any other
352 sanction provided by law.

353 Section 6. For the purpose of incorporating the amendment
354 made by this act to section 948.06, Florida Statutes, in a
355 reference thereto, subsection (9) of section 948.10, Florida
356 Statutes, is reenacted to read:

357 948.10 Community control programs.--

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

361 Section 7. For the purpose of incorporating the amendment
362 made by this act to section 948.06, Florida Statutes, in a
363 reference thereto, section 958.14, Florida Statutes, is
364 reenacted to read:

365 958.14 Violation of probation or community control
366 program.--A violation or alleged violation of probation or the
367 terms of a community control program shall subject the youthful
368 offender to the provisions of s. 948.06. However, no youthful
369 offender shall be committed to the custody of the department for
370 a substantive violation for a period longer than the maximum
371 sentence for the offense for which he or she was found guilty,
372 with credit for time served while incarcerated, or for a
373 technical or nonsubstantive violation for a period longer than 6
374 years or for a period longer than the maximum sentence for the
375 offense for which he or she was found guilty, whichever is less,
376 with credit for time served while incarcerated.

377 Section 8. This act shall take effect July 1, 2007.