

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 and certain arrested persons  
6           pending a probation or community control violation  
7           hearing; providing exceptions; amending s. 948.06, F.S.;  
8           providing definitions; providing that certain alleged  
9           violations of probation or community control by violent  
10          felony offenders of special concern and certain arrested  
11          persons require a hearing and require the alleged  
12          offenders to remain in custody pending hearing; requiring  
13          findings by the court and a decision on revocation of  
14          probation or community control; creating s. 948.064, F.S.;  
15          providing for notification to the criminal justice system  
16          of an offender's status as a violent felony offender of  
17          special concern or other specified offender; amending s.  
18          921.0024, F.S.; revising the worksheet computations of the  
19          Criminal Punishment Code to provide additional community  
20          sanction violation points for certain community sanction  
21          violations committed by violent felony offenders of  
22          special concern; reenacting ss. 948.012(2)(b), 948.10(9),  
23          and 958.14, F.S., relating to split sentence of probation  
24          or community control and imprisonment, community control  
25          programs, and violation of probation or community control,  
26          respectively, to incorporate the amendment to s. 948.06,  
27          F.S., in references thereto; requiring a report on

28 implementation of this act; providing for severability;  
 29 providing an effective date.

30

31 Be It Enacted by the Legislature of the State of Florida:

32

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

34 Section 2. Section 903.0351, Florida Statutes, is created  
 35 to read:

36 903.0351 Restrictions on pretrial release pending  
 37 probation or community control violation hearing.--

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

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

44 (b) A person who is on felony probation or community  
 45 control for any offense committed on or after the effective date  
 46 of this act and who is arrested for a qualifying offense as  
 47 defined in s. 948.06(8)(c); or

48 (c) A person who is on felony probation or community  
 49 control and has previously been found by a court to be a  
 50 habitual violent felony offender as defined by s. 775.084(1)(b),  
 51 a three-time violent felony offender as defined by s.  
 52 775.084(1)(c), or a sexual predator under s. 775.21, and who is  
 53 arrested for committing a qualifying offense as defined in s.  
 54 948.06(8)(c) on or after the effective date of this act.

55 (2) Subsection (1) shall not apply where the alleged

56 violation of felony probation or community control is based  
57 solely on the probationer's or offender's failure to pay costs  
58 or fines or make restitution payments.

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

62 948.06 Violation of probation or community control;  
63 revocation; modification; continuance; failure to pay  
64 restitution or cost of supervision.--

65 (4) Notwithstanding any other provision of this section, a  
66 felony probationer or an offender in community control who is  
67 arrested for violating his or her probation or community control  
68 in a material respect may be taken before the court in the  
69 county or circuit in which the probationer or offender was  
70 arrested. That court shall advise him or her of the ~~such~~ charge  
71 of a violation and, if such charge is admitted, shall cause him  
72 or her to be brought before the court that ~~which~~ granted the  
73 probation or community control. If the ~~such~~ violation is not  
74 admitted by the probationer or offender, the court may commit  
75 him or her or release him or her with or without bail to await  
76 further hearing. However, if the probationer or offender is  
77 under supervision for any criminal offense proscribed in chapter  
78 794, s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a  
79 registered sexual predator or a registered sexual offender, or  
80 is under supervision for a criminal offense for which he or she  
81 would meet the registration criteria in s. 775.21, s. 943.0435,  
82 or s. 944.607 but for the effective date of those sections, the  
83 court must make a finding that the probationer or offender is

84 not a danger to the public prior to release with or without  
85 bail. In determining the danger posed by the offender's or  
86 probationer's release, the court may consider the nature and  
87 circumstances of the violation and any new offenses charged; the  
88 offender's or probationer's past and present conduct, including  
89 convictions of crimes; any record of arrests without conviction  
90 for crimes involving violence or sexual crimes; any other  
91 evidence of allegations of unlawful sexual conduct or the use of  
92 violence by the offender or probationer; the offender's or  
93 probationer's family ties, length of residence in the community,  
94 employment history, and mental condition; his or her history and  
95 conduct during the probation or community control supervision  
96 from which the violation arises and any other previous  
97 supervisions, including disciplinary records of previous  
98 incarcerations; the likelihood that the offender or probationer  
99 will engage again in a criminal course of conduct; the weight of  
100 the evidence against the offender or probationer; and any other  
101 facts the court considers relevant. The court, as soon as is  
102 practicable, shall give the probationer or offender an  
103 opportunity to be fully heard on his or her behalf in person or  
104 by counsel. After the ~~such~~ hearing, the court shall make  
105 findings of fact and forward the findings to the court that  
106 ~~which~~ granted the probation or community control and to the  
107 probationer or offender or his or her attorney. The findings of  
108 fact by the hearing court are binding on the court that ~~which~~  
109 granted the probation or community control. Upon the probationer  
110 or offender being brought before it, the court which granted the  
111 probation or community control may revoke, modify, or continue

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112 the probation or community control or may place the probationer  
113 into community control as provided in this section. However, the  
114 probationer or offender shall not be released and shall not be  
115 admitted to bail, but shall be brought before the court that  
116 granted the probation or community control, if any violation of  
117 felony probation or community control other than a failure to  
118 pay costs or fines or make restitution payments is alleged to  
119 have been committed by:

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

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

126 (c) A person who is on felony probation or community  
127 control and has previously been found by a court to be a  
128 habitual violent felony offender as defined by s. 775.084(1)(b),  
129 a three-time violent felony offender as defined by s.  
130 775.084(1)(c), or a sexual predator under s. 775.21, and who is  
131 arrested for committing a qualifying offense as defined in this  
132 section on or after the effective date of this act.

133 (8)(a) In addition to complying with the provisions of  
134 subsections (1)-(7), this subsection provides further  
135 requirements regarding a probationer or offender in community  
136 control who is a violent felony offender of special concern. The  
137 provisions of this subsection shall control over any conflicting  
138 provisions in subsections (1)-(7). For purposes of this  
139 subsection, the term "convicted" means that there has been a

140 determination of guilt which is the result of a trial or the  
141 entry of a plea of guilty or nolo contendere, regardless of  
142 whether adjudication is withheld.

143 (b) For purposes of this section and ss. 903.0351,  
144 948.064, and 921.0024, the term "violent felony offender of  
145 special concern" means a person who is on:

146 1. Felony probation or community control related to the  
147 commission of a qualifying offense committed on or after the  
148 effective date of this act;

149 2. Felony probation or community control for any offense  
150 committed on or after the effective date of this act and has  
151 previously been convicted of a qualifying offense;

152 3. Felony probation or community control for any offense  
153 committed on or after the effective date of this act and is  
154 found to have violated that probation or community control by  
155 committing a qualifying offense;

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

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

164 or

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

167 s. 775.21 and has committed a qualifying offense on or after the  
 168 effective date of this act.

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

171 1. Kidnapping or attempted kidnapping under s. 787.01,  
 172 false imprisonment of a child under the age of 13 under s.  
 173 787.02(3), or luring or enticing a child under s. 787.025(2)(b)  
 174 or (c).

175 2. Murder or attempted murder under s. 782.04, attempted  
 176 felony murder under s. 782.051, or manslaughter under s. 782.07.

177 3. Aggravated battery or attempted aggravated battery  
 178 under s. 784.045.

179 4. Sexual battery or attempted sexual battery under s.  
 180 794.011(2), (3), (4), or (8)(b) or (c).

181 5. Lewd or lascivious battery or attempted lewd or  
 182 lascivious battery under s. 800.04(4), lewd or lascivious  
 183 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious  
 184 conduct under s. 800.04(6)(b), or lewd or lascivious exhibition  
 185 under s. 800.04(7)(c).

186 6. Robbery or attempted robbery under s. 812.13,  
 187 carjacking or attempted carjacking under s. 812.133, or home  
 188 invasion robbery or attempted home invasion robbery under s.  
 189 812.135.

190 7. Lewd or lascivious offense upon or in the presence of  
 191 an elderly or disabled person or attempted lewd or lascivious  
 192 offense upon or in the presence of an elderly or disabled person  
 193 under s. 825.1025.

- 194        8. Sexual performance by a child or attempted sexual  
 195 performance by a child under s. 827.071.
- 196        9. Computer pornography under s. 847.0135(2) or (3),  
 197 transmission of child pornography under s. 847.0137, or selling  
 198 or buying of minors under s. 847.0145.
- 199        10. Poisoning food or water under s. 859.01.
- 200        11. Abuse of a dead human body under s. 872.06.
- 201        12. Any burglary offense or attempted burglary offense  
 202 that is either a first-degree felony or second-degree felony  
 203 under s. 810.02(2) or (3).
- 204        13. Arson or attempted arson under s. 806.01(1).
- 205        14. Aggravated assault under s. 784.021.
- 206        15. Aggravated stalking under s. 784.048(3), (4), (5), or  
 207 (7).
- 208        16. Aircraft piracy under s. 860.16.
- 209        17. Unlawful throwing, placing, or discharging of a  
 210 destructive device or bomb under s. 790.161(2), (3), or (4).
- 211        18. Treason under s. 876.32.
- 212        19. Any offense committed in another jurisdiction which  
 213 would be an offense listed in this paragraph if that offense had  
 214 been committed in this state.
- 215        (d) In the case of an alleged violation of probation or  
 216 community control other than a failure to pay costs, fines, or  
 217 restitution, the following individuals shall remain in custody  
 218 pending the resolution of the probation or community control  
 219 violation:
- 220            1. A violent felony offender of special concern, as  
 221 defined in this section;

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

226       3. A person who is on felony probation or community  
227 control and has previously been found by a court to be a  
228 habitual violent felony offender as defined by s. 775.084(1)(b),  
229 a three-time violent felony offender as defined by s.  
230 775.084(1)(c), or a sexual predator under s. 775.21, and who is  
231 arrested for committing a qualifying offense as defined in this  
232 section on or after the effective date of this act.

233  
234 The court shall not dismiss the probation or community control  
235 violation warrant pending against an offender enumerated in this  
236 paragraph without holding a recorded violation-of-probation  
237 hearing at which both the state and the offender are  
238 represented.

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

244       1. Make written findings as to whether or not the violent  
245 felony offender of special concern poses a danger to the  
246 community. In determining the danger to the community posed by  
247 the offender's release, the court shall base its findings on one  
248 or more of the following:

249        a. The nature and circumstances of the violation and any  
 250 new offenses charged.

251        b. The offender's present conduct, including criminal  
 252 convictions.

253        c. The offender's amenability to nonincarcerative  
 254 sanctions based on his or her history and conduct during the  
 255 probation or community control supervision from which the  
 256 violation hearing arises and any other previous supervisions,  
 257 including disciplinary records of previous incarcerations.

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

259        e. Any other facts the court considers relevant.

260        2. Decide whether to revoke the probation or community  
 261 control.

262        a. If the court has found that a violent felony offender  
 263 of special concern poses a danger to the community, the court  
 264 shall revoke probation and shall sentence the offender up to the  
 265 statutory maximum, or longer if permitted by law.

266        b. If the court has found that a violent felony offender  
 267 of special concern does not pose a danger to the community, the  
 268 court may revoke, modify, or continue the probation or community  
 269 control or may place the probationer into community control as  
 270 provided in this section.

271        Section 4. Section 948.064, Florida Statutes, is created  
 272 to read:

273        948.064 Notification of status as a violent felony  
 274 offender of special concern.--

275        (1) To facilitate the information available to the court  
 276 at first appearance hearings and at all subsequent hearings for

277 "violent felony offenders of special concern" as defined in s.  
278 948.06, the Department of Corrections shall, no later than  
279 October 1, 2007, develop a system for identifying the offenders  
280 in the department's database and post on the Department of Law  
281 Enforcement's Criminal Justice Intranet a listing of all violent  
282 felony offenders of special concern who are under community  
283 supervision.

284 (2) The county where the arrested person is booked shall  
285 provide the following information to the court at the time of  
286 the first appearance:

287 (a) State and national criminal history information.

288 (b) All criminal justice information available in the  
289 Florida Crime Information Center and the National Crime  
290 Information Center.

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

294 (3) The courts shall assist the department's dissemination  
295 of critical information by creating and maintaining an automated  
296 system to provide the information as specified in this section  
297 to the court with the jurisdiction to conduct the hearings.

298 (4) The state attorney, or the statewide prosecutor if  
299 applicable, shall advise the court at each critical stage in the  
300 judicial process, at which the state attorney or statewide  
301 prosecutor is represented, whether an alleged or convicted  
302 offender is a violent felony offender of special concern; a  
303 person who is on felony probation or community control for any  
304 offense committed on or after the effective date of this act and

305 who is arrested for a qualifying offense; or a person who is on  
 306 felony probation or community control and has previously been  
 307 found by a court to be a habitual violent felony offender as  
 308 defined by s. 775.084(1)(b), a three-time violent felony  
 309 offender as defined by s. 775.084(1)(c), or a sexual predator  
 310 under s. 775.21, and who is arrested for committing a qualifying  
 311 offense on or after the effective date of this act.

312 Section 5. Paragraph (b) of subsection (1) of section  
 313 921.0024, Florida Statutes, is amended to read:

314 921.0024 Criminal Punishment Code; worksheet computations;  
 315 scoresheets.--

316 (1)

317 (b) WORKSHEET KEY:

318

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

323

324 Community sanction violation points are assessed when a  
 325 community sanction violation is before the court for sentencing.  
 326 Six (6) sentence points are assessed for each community sanction  
 327 violation, and each successive community sanction violation,  
 328 unless any of the following apply; ~~however,~~

329 1. If the community sanction violation includes a new  
 330 felony conviction before the sentencing court, twelve (12)  
 331 community sanction violation points are assessed for the ~~such~~

332 violation, and for each successive community sanction violation  
 333 involving a new felony conviction.

334 2. If the community sanction violation is committed by a  
 335 violent felony offender of special concern as defined in s.  
 336 948.06:

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

340 (I) The violation does not involve a new felony  
 341 conviction; and

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

345 b. Twenty-four (24) community sanction violation points  
 346 are assessed for the violation and for each successive violation  
 347 of felony probation or community control where the violation  
 348 includes a new felony conviction.

349  
 350 Multiple counts of community sanction violations before the  
 351 sentencing court shall not be a basis for multiplying the  
 352 assessment of community sanction violation points.

353  
 354 Prior serious felony points: If the offender has a primary  
 355 offense or any additional offense ranked in level 8, level 9, or  
 356 level 10, and one or more prior serious felonies, a single  
 357 assessment of thirty (30) ~~30~~ points shall be added. For purposes  
 358 of this section, a prior serious felony is an offense in the  
 359 offender's prior record that is ranked in level 8, level 9, or

360 level 10 under s. 921.0022 or s. 921.0023 and for which the  
 361 offender is serving a sentence of confinement, supervision, or  
 362 other sanction or for which the offender's date of release from  
 363 confinement, supervision, or other sanction, whichever is later,  
 364 is within 3 years before the date the primary offense or any  
 365 additional offense was committed.

366  
 367 Prior capital felony points: If the offender has one or more  
 368 prior capital felonies in the offender's criminal record, points  
 369 shall be added to the subtotal sentence points of the offender  
 370 equal to twice the number of points the offender receives for  
 371 the primary offense and any additional offense. A prior capital  
 372 felony in the offender's criminal record is a previous capital  
 373 felony offense for which the offender has entered a plea of nolo  
 374 contendere or guilty or has been found guilty; or a felony in  
 375 another jurisdiction which is a capital felony in that  
 376 jurisdiction, or would be a capital felony if the offense were  
 377 committed in this state.

378  
 379 Possession of a firearm, semiautomatic firearm, or machine gun:  
 380 If the offender is convicted of committing or attempting to  
 381 commit any felony other than those enumerated in s. 775.087(2)  
 382 while having in his or her possession: a firearm as defined in  
 383 s. 790.001(6), an additional eighteen (18) ~~18~~ sentence points  
 384 are assessed; or if the offender is convicted of committing or  
 385 attempting to commit any felony other than those enumerated in  
 386 s. 775.087(3) while having in his or her possession a  
 387 semiautomatic firearm as defined in s. 775.087(3) or a machine

388 | gun as defined in s. 790.001(9), an additional twenty-five (25)  
 389 | ~~25~~ sentence points are assessed.

390 |

391 | Sentencing multipliers:

392 |

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

400 |

401 | Law enforcement protection: If the primary offense is a  
 402 | violation of the Law Enforcement Protection Act under s.  
 403 | 775.0823(2), the subtotal sentence points are multiplied by 2.5.  
 404 | If the primary offense is a violation of s. 775.0823(3), (4),  
 405 | (5), (6), (7), or (8), the subtotal sentence points are  
 406 | multiplied by 2.0. If the primary offense is a violation of s.  
 407 | 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
 408 | Protection Act under s. 775.0823(9) or (10), the subtotal  
 409 | sentence points are multiplied by 1.5.

410 |

411 | Grand theft of a motor vehicle: If the primary offense is grand  
 412 | theft of the third degree involving a motor vehicle and in the  
 413 | offender's prior record, there are three or more grand thefts of  
 414 | the third degree involving a motor vehicle, the subtotal  
 415 | sentence points are multiplied by 1.5.

416  
417 Offense related to a criminal street gang: If the offender is  
418 convicted of the primary offense and committed that offense for  
419 the purpose of benefiting, promoting, or furthering the  
420 interests of a criminal street gang as prohibited under s.  
421 874.04, the subtotal sentence points are multiplied by 1.5.

422  
423 Domestic violence in the presence of a child: If the offender is  
424 convicted of the primary offense and the primary offense is a  
425 crime of domestic violence, as defined in s. 741.28, which was  
426 committed in the presence of a child under 16 years of age who  
427 is a family or household member as defined in s. 741.28(3) with  
428 the victim or perpetrator, the subtotal sentence points are  
429 multiplied by 1.5.

430 Section 6. For the purpose of incorporating the amendment  
431 made by this act to section 948.06, Florida Statutes, in a  
432 reference thereto, paragraph (b) of subsection (2) of section  
433 948.012, Florida Statutes, is reenacted to read:

434 948.012 Split sentence of probation or community control  
435 and imprisonment.--

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

440 (b) If the offender does not meet the terms and conditions  
441 of probation or community control, the court may revoke, modify,  
442 or continue the probation or community control as provided in s.  
443 948.06. If the probation or community control is revoked, the

444 court may impose any sentence that it could have imposed at the  
 445 time the offender was placed on probation or community control.  
 446 The court may not provide credit for time served for any portion  
 447 of a probation or community control term toward a subsequent  
 448 term of probation or community control. However, the court may  
 449 not impose a subsequent term of probation or community control  
 450 which, when combined with any amount of time served on preceding  
 451 terms of probation or community control for offenses pending  
 452 before the court for sentencing, would exceed the maximum  
 453 penalty allowable as provided in s. 775.082. Such term of  
 454 incarceration shall be served under applicable law or county  
 455 ordinance governing service of sentences in state or county  
 456 jurisdiction. This paragraph does not prohibit any other  
 457 sanction provided by law.

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

462 948.10 Community control programs.--

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

466 Section 8. For the purpose of incorporating the amendment  
 467 made by this act to section 948.06, Florida Statutes, in a  
 468 reference thereto, section 958.14, Florida Statutes, is  
 469 reenacted to read:

470 958.14 Violation of probation or community control  
 471 program.--A violation or alleged violation of probation or the

472 terms of a community control program shall subject the youthful  
 473 offender to the provisions of s. 948.06. However, no youthful  
 474 offender shall be committed to the custody of the department for  
 475 a substantive violation for a period longer than the maximum  
 476 sentence for the offense for which he or she was found guilty,  
 477 with credit for time served while incarcerated, or for a  
 478 technical or nonsubstantive violation for a period longer than 6  
 479 years or for a period longer than the maximum sentence for the  
 480 offense for which he or she was found guilty, whichever is less,  
 481 with credit for time served while incarcerated.

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

487 (2) The department shall convene the participation of, and  
 488 coordinate preparation of the report with, representatives of  
 489 the following:

490 (a) The Office of the State Courts Administrator on behalf  
 491 of the state courts system.

492 (b) The Florida Prosecuting Attorneys Association.

493 (c) The Florida Public Defender Association.

494 (d) The Florida Association of Criminal Defense Lawyers.

495 (e) Any other units of government, organizations, or  
 496 entities the department deems necessary.

497 (3) At a minimum, the report shall identify any legal,  
 498 fiscal, or administrative impediments to full implementation of  
 499 this act and recommend any legislative action related to

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500 implementation of this act.

501       Section 10. If any provision of this act or its  
502 application to any person or circumstance is held invalid, the  
503 invalidity does not affect other provisions or applications of  
504 the act which can be given effect without the invalid provision  
505 or application, and to this end the provisions of this act are  
506 severable.

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