



804234

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
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The Committee on Criminal Justice (Simon) recommended the following:

Senate Amendment (with title amendment)

Delete lines 69 - 377
and insert:

If the community sanction violation is resolved through the alternative sanctioning program under s. 948.06(9), no points are assessed. If a community sanction violation not resolved through the alternative sanctioning program is before the court, no points are assessed for prior violations that were resolved



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11 through the alternative sanctioning program.

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13 Prior serious felony points: If the offender has a primary
14 offense or any additional offense ranked in level 8, level 9, or
15 level 10, and one or more prior serious felonies, a single
16 assessment of thirty (30) points shall be added. For purposes of
17 this section, a prior serious felony is an offense in the
18 offender's prior record that is ranked in level 8, level 9, or
19 level 10 under s. 921.0022 or s. 921.0023 and for which the
20 offender is serving a sentence of confinement, supervision, or
21 other sanction or for which the offender's date of release from
22 confinement, supervision, or other sanction, whichever is later,
23 is within 3 years before the date the primary offense or any
24 additional offense was committed.

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26 Prior capital felony points: If the offender has one or more
27 prior capital felonies in the offender's criminal record, points
28 shall be added to the subtotal sentence points of the offender
29 equal to twice the number of points the offender receives for
30 the primary offense and any additional offense. A prior capital
31 felony in the offender's criminal record is a previous capital
32 felony offense for which the offender has entered a plea of nolo
33 contendere or guilty or has been found guilty; or a felony in
34 another jurisdiction which is a capital felony in that
35 jurisdiction, or would be a capital felony if the offense were
36 committed in this state.

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38 Possession of a firearm, semiautomatic firearm, or machine gun:
39 If the offender is convicted of committing or attempting to



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40 commit any felony other than those enumerated in s. 775.087(2)
41 while having in his or her possession: a firearm as defined in
42 s. 790.001(6), an additional eighteen (18) sentence points are
43 assessed; or if the offender is convicted of committing or
44 attempting to commit any felony other than those enumerated in
45 s. 775.087(3) while having in his or her possession a
46 semiautomatic firearm as defined in s. 775.087(3) or a machine
47 gun as defined in s. 790.001(9), an additional twenty-five (25)
48 sentence points are assessed.

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50 Sentencing multipliers:

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

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60 Law enforcement protection: If the primary offense is a
61 violation of the Law Enforcement Protection Act under s.
62 775.0823(2), (3), or (4), the subtotal sentence points are
63 multiplied by 2.5. If the primary offense is a violation of s.
64 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
65 are multiplied by 2.0. If the primary offense is a violation of
66 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
67 Protection Act under s. 775.0823(10) or (11), the subtotal
68 sentence points are multiplied by 1.5.



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

Offense related to a criminal gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03, the subtotal sentence points are multiplied by 1.5. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

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

Adult-on-minor sex offense: If the offender was 18 years of age or older and the victim was younger than 18 years of age at the time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1,



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98 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
99 violation involved a victim who was a minor and, in the course
100 of committing that violation, the defendant committed a sexual
101 battery under chapter 794 or a lewd act under s. 800.04 or s.
102 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
103 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
104 800.04; or s. 847.0135(5), the subtotal sentence points are
105 multiplied by 2.0. If applying the multiplier results in the
106 lowest permissible sentence exceeding the statutory maximum
107 sentence for the primary offense under chapter 775, the court
108 may not apply the multiplier and must sentence the defendant to
109 the statutory maximum sentence.

110 Section 2. Paragraph (c) of subsection (1), paragraph (f)
111 of subsection (2), subsection (4), and paragraphs (c) through
112 (f) and (i) of subsection (9) of section 948.06, Florida
113 Statutes, are amended to read:

114 948.06 Violation of probation or community control;
115 revocation; modification; continuance; failure to pay
116 restitution or cost of supervision.—

117 (1)

118 (c) If a probationer or offender on community control
119 commits a technical violation, the probation officer shall
120 determine whether the probationer or offender on community
121 control is eligible for the alternative sanctioning program
122 under subsection (9). If the probation officer determines that
123 the probationer or offender on community control is eligible,
124 the probation officer may proceed with the alternative
125 sanctioning program in lieu of filing an affidavit of violation
126 with the court. If the probationer or offender on community



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127 control is eligible for the alternative sanctioning program and
128 the violation is a low-risk violation as defined in paragraph
129 (9) (b), the probation officer must proceed with the alternative
130 sanctioning program in lieu of filing an affidavit of violation
131 with the court unless directed by the court to submit or file an
132 affidavit of violation pursuant to paragraph (9) (i). For
133 purposes of this section, the term "technical violation" means
134 an alleged violation of supervision that is not a new felony
135 offense, a misdemeanor violation of chapter 784, a misdemeanor
136 crime of domestic violence as defined in s. 741.28, or a
137 misdemeanor under s. 316.193, s. 741.29, s. 741.31, s. 784.046,
138 s. 784.047, s. 784.048, s. 784.0487, s. 784.049, or s. 787.025
139 ~~misdemeanor offense~~, or criminal traffic offense other than a
140 misdemeanor violation of s. 322.34.

141 (2)

142 (f)1. Except as provided in subparagraph 4. 3. or upon
143 waiver by the probationer, the court shall modify or continue a
144 probationary term upon finding a probationer in violation when
145 all of the following apply:

146 a. The term of supervision is probation.

147 b. The probationer does not qualify as a violent felony
148 offender of special concern, as defined in paragraph (8) (b).

149 c. The violation is a low-risk technical violation, as
150 defined in paragraph (9) (b).

151 d. The court has not, on two or more separate occasions,
152 previously found the probationer in violation of his or her
153 probation pursuant to a filed violation of probation affidavit
154 during the current term of supervision. A probationer who has
155 successfully completed sanctions through the alternative



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156 sanctioning program is eligible for mandatory modification or
157 continuation of his or her probation.

158 2. Upon modifying probation under subparagraph 1., the
159 court may include in the sentence a maximum of 90 days in county
160 jail as a special condition of probation. If the court has
161 previously found the probationer in violation of his or her
162 probation and modified probation with up to 90 days in county
163 jail as a special condition of probation, it may, upon
164 modification of probation under subparagraph 1., include in the
165 sentence a maximum of 120 days in county jail as a special
166 condition of probation.

167 ~~3.2.~~ Upon modifying probation under subparagraph 1., the
168 court may include in the sentence a maximum of 90 days in county
169 jail as a special condition of probation.

170 ~~4.3.~~ Notwithstanding s. 921.0024, if a probationer meets
171 the criteria for mandatory modification in subparagraph 1. but
172 has less time under supervision remaining than the number of
173 days in jail authorized in subparagraph 2. than 90 days of
174 supervision remaining on his or her term of probation and meets
175 the criteria for mandatory modification or continuation in
176 subparagraph 1., the court may revoke probation and sentence the
177 probationer to a maximum of 90 or 120 days in county jail as
178 provided in subparagraph 2.

179 5.4. For purposes of imposing a jail sentence under this
180 paragraph only, the court may grant credit only for time served
181 in the county jail since the probationer's most recent arrest
182 for the violation. However, the court may not order the
183 probationer to a total term of incarceration greater than the
184 maximum provided by s. 775.082.



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185 (4) Notwithstanding any other provision of this section, a
186 felony probationer or an offender in community control who is
187 arrested for violating his or her probation or community control
188 in a material respect may be taken before the court in the
189 county or circuit in which the probationer or offender was
190 arrested. That court shall advise him or her of the charge of a
191 violation and, if such charge is admitted, shall cause him or
192 her to be brought before the court that granted the probation or
193 community control. If the violation is not admitted by the
194 probationer or offender, the court may commit him or her or
195 release him or her with or without bail to await further
196 hearing. However, if the probationer or offender is under
197 supervision for any criminal offense proscribed in chapter 794,
198 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a
199 registered sexual predator or a registered sexual offender, or
200 is under supervision for a criminal offense for which he or she
201 would meet the registration criteria in s. 775.21, s. 943.0435,
202 or s. 944.607 but for the effective date of those sections, the
203 court must make a finding that the probationer or offender is
204 not a danger to the public prior to release with or without
205 bail. In determining the danger posed by the offender's or
206 probationer's release, the court may consider the nature and
207 circumstances of the violation and any new offenses charged; the
208 offender's or probationer's past and present conduct, including
209 convictions of crimes; any record of arrests without conviction
210 for crimes involving violence or sexual crimes; any other
211 evidence of allegations of unlawful sexual conduct or the use of
212 violence by the offender or probationer; the offender's or
213 probationer's family ties, length of residence in the community,



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214 employment history, and mental condition; his or her history and
215 conduct during the probation or community control supervision
216 from which the violation arises and any other previous
217 supervisions, including disciplinary records of previous
218 incarcerations; the likelihood that the offender or probationer
219 will engage again in a criminal course of conduct; the weight of
220 the evidence against the offender or probationer; and any other
221 facts the court considers relevant. The court, as soon as is
222 practicable, shall give the probationer or offender an
223 opportunity to be fully heard on his or her behalf in person or
224 by counsel. If the alleged violation is a low-risk violation as
225 defined in paragraph (9) (b), the court must, within 20 days
226 after arrest, give the probationer or offender an opportunity to
227 be fully heard on his or her behalf in person or by counsel. If
228 no hearing is held within 20 days after arrest, the court must
229 release the probationer or offender without bail. The court may
230 impose nonmonetary conditions of release. After the hearing, the
231 court shall make findings of fact and forward the findings to
232 the court that granted the probation or community control and to
233 the probationer or offender or his or her attorney. The findings
234 of fact by the hearing court are binding on the court that
235 granted the probation or community control. Upon the probationer
236 or offender being brought before it, the court that granted the
237 probation or community control may revoke, modify, or continue
238 the probation or community control or may place the probationer
239 into community control as provided in this section. However, the
240 probationer or offender shall not be released and shall not be
241 admitted to bail, but shall be brought before the court that
242 granted the probation or community control if any violation of



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243 felony probation or community control other than a failure to
244 pay costs or fines or make restitution payments is alleged to
245 have been committed by:

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

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

252 (c) A person who is on felony probation or community
253 control and has previously been found by a court to be a
254 habitual violent felony offender as defined in s. 775.084(1)(b),
255 a three-time violent felony offender as defined in s.
256 775.084(1)(c), or a sexual predator under s. 775.21, and who is
257 arrested for committing a qualifying offense as defined in this
258 section on or after the effective date of this act.

259 (9)

260 (c) As used in this subsection, the term "moderate-risk
261 violation" means any of the following:

262 1. A violation identified in paragraph (b), when committed
263 by an offender on community control.

264 2. Failure to remain at an approved residence by an
265 offender on community control.

266 3. A third violation identified in paragraph (b) by a
267 probationer within the current term of supervision.

268 4. A new misdemeanor offense that is not a misdemeanor
269 violation of chapter 784, a misdemeanor crime of domestic
270 violence as defined in s. 741.28, or a misdemeanor under s.
271 316.193, s. 741.29, s. 741.31, s. 784.046, s. 784.047, s.



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272 784.048, s. 784.0487, s. 784.049, or s. 787.025.

273 5.4. Any other violation as determined by administrative
274 order of the chief judge of the circuit.

275 (d) A probationer or offender on community control is not
276 eligible for an alternative sanction if:

277 1. He or she is a violent felony offender of special
278 concern as defined in paragraph (8) (b);

279 2. The violation is a felony, a misdemeanor violation of
280 chapter 784, a misdemeanor crime of domestic violence as defined
281 in s. 741.28, or a misdemeanor under s. 316.193, s. 741.29, s.
282 741.31, s. 784.046, s. 784.047, s. 784.048, s. 784.0487, s.
283 784.049, or s. 787.025 ~~misdemeanor~~, or criminal traffic offense
284 other than a misdemeanor violation of s. 322.34;

285 3. The violation is absconding;

286 4. The violation is of a stay-away order or no-contact
287 order;

288 5. The violation is not identified as low-risk or moderate-
289 risk under this subsection or by administrative order;

290 6. He or she has a prior moderate-risk level violation
291 during the current term of supervision;

292 7. He or she has three prior low-risk level violations
293 during the same term of supervision;

294 8. The term of supervision is scheduled to terminate in
295 less than 90 days; or

296 9. The terms of the sentence prohibit alternative
297 sanctioning.

298 (e) For a first or second low-risk violation, as defined in
299 paragraph (b), within the current term of supervision, a
300 probation officer shall ~~may~~ offer an eligible probationer one or



301 more of the following as an alternative sanction:
302 1. Up to 5 days in the county jail.
303 2. Up to 50 additional community service hours.
304 3. Counseling or treatment.
305 4. Support group attendance.
306 5. Drug testing.
307 6. Loss of travel or other privileges.
308 7. Curfew for up to 30 days.
309 8. House arrest for up to 30 days.
310 9.a. Any other sanction as determined by administrative
311 order of the chief judge of the circuit.
312 b. However, in no circumstance shall participation in an
313 alternative sanctioning program convert a withheld adjudication
314 to an adjudication of guilt.
315 (f)1. For a first moderate-risk violation, as defined in
316 paragraph (c), within the current term of supervision, a
317 probation officer, with a supervisor's approval, may offer an
318 eligible probationer or offender on community control one or
319 more of the following as an alternative sanction:
320 ~~a.1.~~ Up to 21 days in the county jail.
321 ~~b.2.~~ Curfew for up to 90 days.
322 ~~c.3.~~ House arrest for up to 90 days.
323 ~~d.4.~~ Electronic monitoring for up to 90 days.
324 ~~e.5.~~ Residential treatment for up to 90 days.
325 ~~f.6.~~ Any other sanction available for a low-risk violation.
326 ~~g.7.a.~~ Any other sanction as determined by administrative
327 order of the chief judge of the circuit.
328 ~~b.~~ However, in no circumstance shall participation in an
329 alternative sanctioning program convert a withheld adjudication



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330 to an adjudication of guilt.

331 2. If the violation of subparagraph 1. is a moderate-risk
332 violation of an offense specified in subparagraph (c)4., the
333 state attorney must consent to the offer of an alternative
334 sanction.

335
336 ===== T I T L E A M E N D M E N T =====

337 And the title is amended as follows:

338 Delete lines 18 - 22

339 and insert:

340 low-risk violations; revising the definition of the
341 term "moderate-risk violation"; providing that an
342 alternative sanction is the required method for
343 resolving certain low-risk violations; requiring the
344 state attorney to consent to the offering of an
345 alternative sanction under certain circumstances;
346 requiring a court to impose the