

By the Committee on Criminal Justice; and Senators Davis and Book

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1 A bill to be entitled
2 An act relating to custody and supervision of
3 specified offenders; amending s. 794.011, F.S.;
4 excluding certain offenders from eligibility to
5 receive basic gain-time; amending s. 944.275, F.S.;
6 excluding certain offenders from eligibility to
7 receive incentive gain-time; amending s. 948.05, F.S.;
8 excluding certain offenders from eligibility for
9 specified reductions to a term of supervision;
10 amending s. 948.30, F.S.; requiring a court to impose
11 additional conditions of supervision on specified
12 offenders; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Subsection (7) of section 794.011, Florida
17 Statutes, is amended to read:

18 794.011 Sexual battery.—

19 (7) (a) A person who is convicted of committing a sexual
20 battery on or after October 1, 1992, is not eligible for basic
21 gain-time under s. 944.275.

22 (b) Notwithstanding paragraph (a), for sentences imposed
23 for offenses committed on or after July 1, 2023, a person who is
24 convicted of committing or attempting, soliciting, or conspiring
25 to commit a sexual battery in violation of this section is not
26 eligible for basic gain-time under s. 944.275.

27 (c) This subsection may be cited as the "Junny Rios-
28 Martinez, Jr. Act of 1992."

29 Section 2. Paragraph (e) of subsection (4) of section

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30 944.275, Florida Statutes, is amended, and paragraph (b) of that
31 subsection is republished, to read:

32 944.275 Gain-time.—

33 (4)

34 (b) For each month in which an inmate works diligently,
35 participates in training, uses time constructively, or otherwise
36 engages in positive activities, the department may grant
37 incentive gain-time in accordance with this paragraph. The rate
38 of incentive gain-time in effect on the date the inmate
39 committed the offense which resulted in his or her incarceration
40 shall be the inmate's rate of eligibility to earn incentive
41 gain-time throughout the period of incarceration and shall not
42 be altered by a subsequent change in the severity level of the
43 offense for which the inmate was sentenced.

44 1. For sentences imposed for offenses committed prior to
45 January 1, 1994, up to 20 days of incentive gain-time may be
46 granted. If granted, such gain-time shall be credited and
47 applied monthly.

48 2. For sentences imposed for offenses committed on or after
49 January 1, 1994, and before October 1, 1995:

50 a. For offenses ranked in offense severity levels 1 through
51 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
52 of incentive gain-time may be granted. If granted, such gain-
53 time shall be credited and applied monthly.

54 b. For offenses ranked in offense severity levels 8, 9, and
55 10, under former s. 921.0012 or former s. 921.0013, up to 20
56 days of incentive gain-time may be granted. If granted, such
57 gain-time shall be credited and applied monthly.

58 3. For sentences imposed for offenses committed on or after

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59 October 1, 1995, the department may grant up to 10 days per
60 month of incentive gain-time.

61 (e)1. Notwithstanding subparagraph (b)3., for sentences
62 imposed for offenses committed on or after October 1, 2014, and
63 before July 1, 2023, the department may not grant incentive
64 gain-time if the offense is a violation of s. 782.04(1)(a)2.c.;
65 s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011,
66 excluding s. 794.011(10); s. 800.04; s. 825.1025; or s.
67 847.0135(5).

68 2. Notwithstanding subparagraph (b)3., for sentences
69 imposed for offenses committed on or after July 1, 2023, the
70 department may not grant incentive gain-time if the offense is
71 for committing or attempting, soliciting, or conspiring to
72 commit a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2. or
73 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s.
74 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

75 Section 3. Paragraph (e) of subsection (2) of section
76 948.05, Florida Statutes, is amended, and paragraph (f) is added
77 to that subsection, to read:

78 948.05 Court to admonish or commend probationer or offender
79 in community control; graduated incentives.-

80 (2) The department shall implement a system of graduated
81 incentives to promote compliance with the terms of supervision,
82 encourage educational achievement and stable employment, and
83 prioritize the highest levels of supervision for probationers or
84 offenders presenting the greatest risk of recidivism.

85 (e) A probationer or offender in community control who
86 commits a subsequent violation of probation may forfeit any
87 previously earned probation incentive, as determined appropriate

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88 by his or her probation officer.

89 (f) A probationer or offender in community control who is
90 placed under supervision for committing or attempting,
91 soliciting, or conspiring to commit a violation of any felony
92 offense described in s. 775.21(4) (a)1.a. or b. or s.
93 943.0435(1) (h)1.a., or who qualifies as a violent felony
94 offender of special concern under s. 948.06(8) (b) is not
95 eligible for any reduction of his or her term of supervision
96 under this section.

97 Section 4. Section 948.30, Florida Statutes, is amended to
98 read:

99 948.30 Additional terms and conditions of probation or
100 community control for certain sex offenses.—Conditions imposed
101 pursuant to this section do not require oral pronouncement at
102 the time of sentencing and shall be considered standard
103 conditions of probation or community control for offenders
104 specified in this section.

105 (1) Effective for probationers or community controllees
106 whose crime was committed on or after October 1, 1995, and who
107 are placed under supervision for a violation of chapter 794, s.
108 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, or whose
109 crime was committed on or after July 1, 2021, and who are placed
110 under supervision for a violation of s. 787.06(3) (b), (d), (f),
111 or (g), or whose crime was committed on or after July 1, 2023,
112 and who are placed under supervision for attempting, soliciting,
113 or conspiring to commit a violation of s. 787.06(3) (b), (d),
114 (f), or (g); chapter 794; s. 800.04; s. 827.071; s. 847.0135(5);
115 or s. 847.0145, the court must impose the following conditions
116 in addition to all other standard and special conditions

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117 imposed:

118 (a) A mandatory curfew from 10 p.m. to 6 a.m. The court may
119 designate another 8-hour period if the offender's employment
120 precludes the above specified time, and the alternative is
121 recommended by the Department of Corrections. If the court
122 determines that imposing a curfew would endanger the victim, the
123 court may consider alternative sanctions.

124 (b) If the victim was under the age of 18, a prohibition on
125 living within 1,000 feet of a school, child care facility, park,
126 playground, or other place where children regularly congregate,
127 as prescribed by the court. The 1,000-foot distance shall be
128 measured in a straight line from the offender's place of
129 residence to the nearest boundary line of the school, child care
130 facility, park, playground, or other place where children
131 congregate. The distance may not be measured by a pedestrian
132 route or automobile route. A probationer or community controllee
133 who is subject to this paragraph may not be forced to relocate
134 and does not violate his or her probation or community control
135 if he or she is living in a residence that meets the
136 requirements of this paragraph and a school, child care
137 facility, park, playground, or other place where children
138 regularly congregate is subsequently established within 1,000
139 feet of his or her residence.

140 (c) Active participation in and successful completion of a
141 sex offender treatment program with qualified practitioners
142 specifically trained to treat sex offenders, at the
143 probationer's or community controllee's own expense. If a
144 qualified practitioner is not available within a 50-mile radius
145 of the probationer's or community controllee's residence, the

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146 offender shall participate in other appropriate therapy.

147 (d) A prohibition on any contact with the victim, directly
148 or indirectly, including through a third person, unless approved
149 by the victim, a qualified practitioner in the sexual offender
150 treatment program, and the sentencing court.

151 (e) If the victim was under the age of 18, a prohibition on
152 contact with a child under the age of 18 except as provided in
153 this paragraph. The court may approve supervised contact with a
154 child under the age of 18 if the approval is based upon a
155 recommendation for contact issued by a qualified practitioner
156 who is basing the recommendation on a risk assessment. Further,
157 the sex offender must be currently enrolled in or have
158 successfully completed a sex offender therapy program. The court
159 may not grant supervised contact with a child if the contact is
160 not recommended by a qualified practitioner and may deny
161 supervised contact with a child at any time. When considering
162 whether to approve supervised contact with a child, the court
163 must review and consider the following:

164 1. A risk assessment completed by a qualified practitioner.
165 The qualified practitioner must prepare a written report that
166 must include the findings of the assessment and address each of
167 the following components:

168 a. The sex offender's current legal status;

169 b. The sex offender's history of adult charges with
170 apparent sexual motivation;

171 c. The sex offender's history of adult charges without
172 apparent sexual motivation;

173 d. The sex offender's history of juvenile charges, whenever
174 available;

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175 e. The sex offender's offender treatment history, including
176 consultations with the sex offender's treating, or most recent
177 treating, therapist;

178 f. The sex offender's current mental status;

179 g. The sex offender's mental health and substance abuse
180 treatment history as provided by the Department of Corrections;

181 h. The sex offender's personal, social, educational, and
182 work history;

183 i. The results of current psychological testing of the sex
184 offender if determined necessary by the qualified practitioner;

185 j. A description of the proposed contact, including the
186 location, frequency, duration, and supervisory arrangement;

187 k. The child's preference and relative comfort level with
188 the proposed contact, when age appropriate;

189 l. The parent's or legal guardian's preference regarding
190 the proposed contact; and

191 m. The qualified practitioner's opinion, along with the
192 basis for that opinion, as to whether the proposed contact would
193 likely pose significant risk of emotional or physical harm to
194 the child.

195
196 The written report of the assessment must be given to the court;

197 2. A recommendation made as a part of the risk assessment
198 report as to whether supervised contact with the child should be
199 approved;

200 3. A written consent signed by the child's parent or legal
201 guardian, if the parent or legal guardian is not the sex
202 offender, agreeing to the sex offender having supervised contact
203 with the child after receiving full disclosure of the sex

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204 offender's present legal status, past criminal history, and the
205 results of the risk assessment. The court may not approve
206 contact with the child if the parent or legal guardian refuses
207 to give written consent for supervised contact;

208 4. A safety plan prepared by the qualified practitioner,
209 who provides treatment to the offender, in collaboration with
210 the sex offender, the child's parent or legal guardian, if the
211 parent or legal guardian is not the sex offender, and the child,
212 when age appropriate, which details the acceptable conditions of
213 contact between the sex offender and the child. The safety plan
214 must be reviewed and approved by the court; and

215 5. Evidence that the child's parent or legal guardian
216 understands the need for and agrees to the safety plan and has
217 agreed to provide, or to designate another adult to provide,
218 constant supervision any time the child is in contact with the
219 offender.

220
221 The court may not appoint a person to conduct a risk assessment
222 and may not accept a risk assessment from a person who has not
223 demonstrated to the court that he or she has met the
224 requirements of a qualified practitioner as defined in this
225 section.

226 (f) If the victim was under age 18, a prohibition on
227 working for pay or as a volunteer at any place where children
228 regularly congregate, including, but not limited to, schools,
229 child care facilities, parks, playgrounds, pet stores,
230 libraries, zoos, theme parks, and malls.

231 (g) Unless otherwise indicated in the treatment plan
232 provided by a qualified practitioner in the sexual offender

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233 treatment program, a prohibition on viewing, accessing, owning,
234 or possessing any obscene, pornographic, or sexually stimulating
235 visual or auditory material, including telephone, electronic
236 media, computer programs, or computer services that are relevant
237 to the offender's deviant behavior pattern.

238 (h) Effective for probationers and community controllees
239 whose crime is committed on or after July 1, 2005, a prohibition
240 on accessing the Internet or other computer services until a
241 qualified practitioner in the offender's sex offender treatment
242 program, after a risk assessment is completed, approves and
243 implements a safety plan for the offender's accessing or using
244 the Internet or other computer services.

245 (i) A requirement that the probationer or community
246 controllee must submit a specimen of blood or other approved
247 biological specimen to the Department of Law Enforcement to be
248 registered with the DNA data bank.

249 (j) A requirement that the probationer or community
250 controllee make restitution to the victim, as ordered by the
251 court under s. 775.089, for all necessary medical and related
252 professional services relating to physical, psychiatric, and
253 psychological care.

254 (k) Submission to a warrantless search by the community
255 control or probation officer of the probationer's or community
256 controllee's person, residence, or vehicle.

257 (2) Effective for a probationer or community controllee
258 whose crime was committed on or after October 1, 1997, and who
259 is placed on community control or sex offender probation for a
260 violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5),
261 or s. 847.0145, or whose crime was committed on or after July 1,

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262 2021, and who is placed on community control or sex offender
263 probation for a violation of s. 787.06(3)(b), (d), (f), or (g),
264 or whose crime was committed on or after July 1, 2023, and who
265 is placed on community control or sex offender probation for
266 attempting, soliciting, or conspiring to commit a violation of
267 s. 787.06(3)(b), (d), (f), or (g); chapter 794; s. 800.04; s.
268 827.071; s. 847.0135(5); or s. 847.0145, in addition to any
269 other provision of this section, the court must impose the
270 following conditions of probation or community control:

271 (a) As part of a treatment program, participation at least
272 annually in polygraph examinations to obtain information
273 necessary for risk management and treatment and to reduce the
274 sex offender's denial mechanisms. A polygraph examination must
275 be conducted by a polygrapher who is a member of a national or
276 state polygraph association and who is certified as a
277 postconviction sex offender polygrapher, where available, and
278 shall be paid for by the probationer or community controllee.
279 The results of the polygraph examination shall be provided to
280 the probationer's or community controllee's probation officer
281 and qualified practitioner and shall not be used as evidence in
282 court to prove that a violation of community supervision has
283 occurred.

284 (b) Maintenance of a driving log and a prohibition against
285 driving a motor vehicle alone without the prior approval of the
286 supervising officer.

287 (c) A prohibition against obtaining or using a post office
288 box without the prior approval of the supervising officer.

289 (d) If there was sexual contact, a submission to, at the
290 probationer's or community controllee's expense, an HIV test

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291 with the results to be released to the victim or the victim's
292 parent or guardian.

293 (e) Electronic monitoring when deemed necessary by the
294 community control or probation officer and his or her
295 supervisor, and ordered by the court at the recommendation of
296 the Department of Corrections.

297 (3) Effective for a probationer or community controllee
298 whose crime was committed on or after September 1, 2005, and
299 who:

300 (a) Is placed on probation or community control for a
301 violation of chapter 794; ~~s. 800.04(4), (5), or (6);~~ s.
302 827.071; or s. 847.0145, or is placed on probation or community
303 control on or after July 1, 2023, for attempting, soliciting, or
304 conspiring to commit a violation of chapter 794; s. 800.04(4),
305 (5), or (6); s. 827.071; or s. 847.0145, and the unlawful sexual
306 activity involved a victim 15 years of age or younger and the
307 offender is 18 years of age or older;

308 (b) Is designated a sexual predator pursuant to s. 775.21;
309 or

310 (c) Has previously been convicted of a violation of chapter
311 794; ~~s. 800.04(4), (5), or (6);~~ s. 827.071; or s. 847.0145
312 and the unlawful sexual activity involved a victim 15 years of
313 age or younger and the offender is 18 years of age or older,
314
315 the court must order, in addition to any other provision of this
316 section, mandatory electronic monitoring as a condition of the
317 probation or community control supervision.

318 (4) In addition to all other conditions imposed, for a
319 probationer or community controllee who is subject to

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320 supervision for a crime that was committed on or after May 26,
321 2010, and who has been convicted at any time of committing, or
322 attempting, soliciting, or conspiring to commit, any of the
323 criminal offenses listed in s. 943.0435(1)(h)1.a.(I), or a
324 similar offense in another jurisdiction, against a victim who
325 was under the age of 18 at the time of the offense; if the
326 offender has not received a pardon for any felony or similar law
327 of another jurisdiction necessary for the operation of this
328 subsection, if a conviction of a felony or similar law of
329 another jurisdiction necessary for the operation of this
330 subsection has not been set aside in any postconviction
331 proceeding, or if the offender has not been removed from the
332 requirement to register as a sexual offender or sexual predator
333 pursuant to s. 943.04354, the court must impose the following
334 conditions:

335 (a) A prohibition on visiting schools, child care
336 facilities, parks, and playgrounds, without prior approval from
337 the offender's supervising officer. The court may also designate
338 additional locations to protect a victim. The prohibition
339 ordered under this paragraph does not prohibit the offender from
340 visiting a school, child care facility, park, or playground for
341 the sole purpose of attending a religious service as defined in
342 s. 775.0861 or picking up or dropping off the offender's
343 children or grandchildren at a child care facility or school.

344 (b) A prohibition on distributing candy or other items to
345 children on Halloween; wearing a Santa Claus costume, or other
346 costume to appeal to children, on or preceding Christmas;
347 wearing an Easter Bunny costume, or other costume to appeal to
348 children, on or preceding Easter; entertaining at children's

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349 parties; or wearing a clown costume; without prior approval from
350 the court.

351 (5) Effective for a probationer or community controllee
352 whose crime was committed on or after October 1, 2014, and who
353 is placed on probation or community control for a violation of
354 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.
355 847.0145, or whose crime was committed on or after July 1, 2023,
356 and who is placed on probation or community control for
357 attempting, soliciting, or conspiring to commit a violation of
358 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.
359 847.0145, in addition to all other conditions imposed, the court
360 must impose a condition prohibiting the probationer or community
361 controllee from viewing, accessing, owning, or possessing any
362 obscene, pornographic, or sexually stimulating visual or
363 auditory material unless otherwise indicated in the treatment
364 plan provided by a qualified practitioner in the sexual offender
365 treatment program. Visual or auditory material includes, but is
366 not limited to, telephone, electronic media, computer programs,
367 and computer services.

368 Section 5. This act shall take effect July 1, 2023.