

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2284

SPONSOR: Criminal Justice Committee and Senators Villalobos, Haridopolos, Crist, Argenziano, Fasano, and Smith

SUBJECT: Probation and Community Control

DATE: April 14, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This Committee Substitute substantially amends portions of chapters 947 and 948, F.S. It includes provisions intended to improve the supervision of high risk offenders, such as a requirement for the Department of Corrections to develop a risk assessment and alert system. The Supreme Court is requested to amend the criminal rules so that certain forcible felons will remain in custody pending violation hearings. The CS also includes methods to better deal with offenders with substance abuse problems, including revision of criteria for screening and assessment and provision of services after release from imprisonment, expansion of drug testing to additional offenders, and clarification of a standard condition of probation to allow revocation of community supervision for a single positive drug test. The CS gives the department increased flexibility to order electronic monitoring; and permits the use of a technical violation letter for non-felony offenses. It requires the department to provide the court with a recommendation as to disposition of violators. The department is required to review and report on serious felony violations by supervised offenders and to provide the report to the Office of Program and Policy Analysis (OPPAGA). OPPAGA is required to provide the Legislature with an annual summary and recommendation. The CS also requires law enforcement officers to assist with arrest and transport of violators upon request, and requires a statement from the offender when the alleged violation is for failure to pay court-order obligations. In addition, the CS provides authority for the court to order a community supervision appearance bond.

This CS substantially amends ss. 944.473, 944.705, 947.22, 948.03, 948.032, and 948.06, of the Florida Statutes. It also creates ss. 903.0473, 948.061, and 948.062 of the Florida Statutes.

**II. Present Situation:**

On February 1, 2004, 11-year old Carlie Brucia was abducted while walking home from a friend’s house in Sarasota, Florida. The kidnapping of a child is noteworthy in any circumstance, but in this case public attention was especially riveted by police discovery of a car wash security camera video that apparently recorded the abduction. A suspect was apprehended in part as a result of public response to the dissemination of the video and pictures by the media. Tragically, Carlie Brucia’s body was discovered five days after her abduction.

It was quickly learned that the suspect, Joseph P. Smith, was a convicted felon who was on drug offender probation at the time of the crime. Smith has a significant criminal history and there were indications that he had violated the conditions of his probation by using drugs and failing to meet court-ordered financial obligations. If a court had found that Smith violated his probation in a material respect, it could have revoked his probation and returned him to custody. Therefore, some media portrayed the case as a failure of the system, or of individuals in the system, to properly carry out the duty of protecting the public.

On February 21, 2004, a grand jury indicted Smith on charges of premeditated murder, kidnapping to facilitate the commission of a felony, and sexual battery by a person over 18 years of age upon a person under 12 years of age. Like all defendants, Smith is legally presumed to be innocent of each charge unless and until the jury finds that the prosecution has proven the charge beyond a reasonable doubt.

On March 9, 2004, the Senate Judiciary Committee and the Senate Criminal Justice Committee held a joint meeting. Although the meeting was prompted by Carlie Brucia’s case, the committees recognized that it would not be appropriate to focus solely on the facts of that tragic case. Instead, the committees examined the broader issue of whether there are weaknesses in the justice system relating to probation, the Amber Alert system, and sharing of criminal history information. The committees heard testimony from the Attorney General and other representatives from components of the criminal justice system.

**OVERVIEW OF PROBATION AND COMMUNITY CONTROL**

As of February 29, 2004, there were 151,473 offenders on some form of community supervision in Florida. This number fluctuates as offenders are added to supervision, are released from prison onto supervision, have their supervision revoked and are sent to prison, or successfully complete their term of supervision.

The following table illustrates the types of supervision and the number of offenders who are on probation or community control, the most common types of community supervision:

Probation (active and active suspense)	126,102
Standard probation	104,930
Drug offender probation	16,858
Sex offender probation	2,841
Administrative probation	1,473

Community Control	11,826
Standard community control	11,473
Sex offender community control	353

Felony probationers and community controllees are under the jurisdiction of the circuit court, and are supervised by the Department of Corrections.

People who are found to have committed crimes can be placed on some form of community supervision, such as probation or community control, by any court having jurisdiction over criminal actions. The statute recommends community supervision for offenders who appear not likely to reoffend and who present the lowest danger to the welfare of society. Generally, this means those offenders whose sentencing guidelines score sheet does not recommend incarceration under the Criminal Punishment Code. There is also the possibility that a person can be diverted to a pretrial intervention program without having to go to trial or enter a plea.

Approximately one-fourth of the offenders on community supervision committed either theft, forgery, or fraud as their most serious offense. Another one-fourth are on community supervision for committing a drug offense. Violent crimes, such as murder/manslaughter, sexual offenses, and robbery account for another one-fourth of the community supervision population. Of those placed on probation, 63 percent have no prior community supervision commitments and 87 percent have never been sentenced to prison. Of those placed into community control, 38 percent have no prior community supervision commitments and 81 percent have never been sentenced to prison. Of the 151,000 persons on some form of community supervision, almost 95,000 a year will be removed from supervision and replaced by a slightly higher number of new admissions.

**Types of Supervision**

**Probation** – Probation is a term or sentence imposed by the court with standard statutory conditions as well as special conditions that may be imposed by the court. Probation lasts for a specific period of time that cannot exceed the maximum sentence for the offense. The first two conditions that apply to probation and all forms of supervision require the probationer to report to his or her correctional probation officer and permit the officer to visit the probationer at work, home, or elsewhere. This requirement ensures that contact is maintained throughout the term of probation.

**Administrative Probation** – A probationer who successfully completes half the term of probation and who represents a low risk of harm to the community may be placed on administrative probation. This is a non-reporting status, but periodic record checks are completed to verify that the offender has not violated the law.

**Drug Offender Probation** – Drug offender probation includes intensive supervision that emphasizes treatment of the offender. Correctional probation officers with specific training or experience are assigned to supervise drug offender probationers. The caseloads for these officers are limited to 50 offenders. In addition to the standard terms and conditions of probation, drug offender probation includes an individual treatment plan and additional surveillance and random drug testing.

***Sex Offender Probation and Sex Offender Community Control*** – Sex offender probation and sex offender community control also includes intensive supervision that emphasizes treatment. As with any form of community control, it may also include electronic monitoring. Like drug offender probation, officers with specific training or experience and with limited case loads are assigned to supervise sex offenders. Each offender in this program has an individualized plan of treatment. The standard terms and conditions of probation or community control apply to persons on sex offender probation, along with additional terms and conditions specified in the statutes. These conditions restrict the sex offender in terms of where he or she may live, work, and visit; with whom he or she may associate; and when he or she may be outside the residence. The statute also requires DNA samples, polygraph testing, and active participation in sex offender treatment.

***Community Control*** – Community control is a community-based punishment alternative to incarceration or regular probation. It includes supervised house arrest, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is intended for felons who are unsuitable for regular probation because of their criminal background or the seriousness of their crime, but for whom the court deems imprisonment to be unnecessary. It may also be appropriate for some felony probation or parole violators who commit technical or misdemeanor violations. A correctional probation officer is statutorily restricted from having more than 25 community controllees on his or her caseload. Violation of any community control condition may result in revocation by the court and imposition of any sentence which might have been imposed originally.

As with other forms of supervision, all the standard terms and conditions of standard probation apply to persons on community control. In addition to those conditions, the statute permits the court to impose more contact with correctional probation officers, confinement to the residence except during work hours, mandatory public service, and electronic monitoring. Some sex offenders are placed on sex offender community control for heightened supervision, and the additional sex offender conditions discussed in the section on sex offender probation are applied.

Electronic monitoring is often used in community control cases to track the offender's movement or monitor compliance with terms of confinement to the residence. Section 948.03(3)(a)1, F.S., gives the department the discretion to place community controllees on electronic monitoring. However, the department does not exercise this discretion because of substantial case law that an offender's failure to submit to electronic monitoring ordered by the department cannot be a basis for revocation of community control.

***Pretrial Intervention and other Forms of Supervision*** – Florida operates or oversees a number of different pretrial intervention programs, such as drug courts. The criminal justice system diverts some of the least serious offenders into these programs. These programs have conditions similar to probation, including fees, restitution, public service, and counseling to prevent a return to criminal behavior. If the participant successfully completes the program, the state dismisses the charges and he or she avoids a criminal record. Noncompletion of the program results in normal prosecution of the case.

The department also supervises a limited number of post-prison offenders on parole, conditional release, and control release. The provisions and conditions for these programs are outlined in

chapter 947, F.S., which deals with the Florida Parole Commission. This type of term of supervision is ordered by the commission rather than the sentencing court. Eligibility for parole was closed in 1983 when the sentencing guidelines were established. Other types of post-prison release supervision include provisional release, supervised community release, conditional pardons, county work release, and addiction recovery supervision.

The conditional release program applies to certain inmates convicted for committing very serious crimes who are released from incarceration prior to completion of their sentence due to application of gain time credits. These inmates must serve the remainder of their full sentence on community supervision.

### **Violation of Probation or Community Control**

Section 948.03, F.S., provides an extensive list of terms of probation or community control which the court may impose, as well as certain mandatory conditions that must be imposed for certain offenses. Under s. 948.06, F.S., whenever there are reasonable grounds to believe that a probationer or community controllee has violated the terms imposed by the court in a material respect, they may be arrested without warrant by any law enforcement officer or parole and probation supervisor who is aware of their status as a probationer or community controllee. The court may also issue an arrest warrant based upon reasonable cause that the conditions have been violated. In either case, after arrest the offender is returned to the court that imposed the sentence.

Once brought before the court for an alleged violation, the offender is advised of the charge. If the charge is not admitted, the court may commit the offender to jail to await a hearing, release the offender with or without bail, or dismiss the charge. If the offender admits the charge or is determined to have committed the violation after a hearing, the court may revoke, modify, or continue the probation or community control. If probation or community control is revoked, the court must adjudge the offender guilty of the offense for which he or she was on community supervision, and may impose any sentence which it might have originally imposed before placing the offender on probation or into community control.

### **Appearance bonds**

Chapter 903, F.S., provides requirements for bonds that are posted to meet a bail requirement for pretrial or appellate release of criminal defendants. When the bond is a surety bond issued by a bail bond agent, the defendant typically pays the bail bond agent a nonrefundable fee of 10 percent of the bail amount. The bail bond agent is responsible for ensuring the appearance of the defendant at trial. Section 903.105, F.S., provides for an appearance bond that may be posted by a defendant with the clerk of court. The appearance bond is 10 percent of the amount of bail, plus any additional required collateral, and the defendant receives 75 percent of the bond amount and the additional collateral back upon completion of his or her obligations to the court.

Bail bond agents are regulated by chapter 648, F.S.

### III. Effect of Proposed Changes:

#### High Risk Offenders

##### *Risk assessment and alert system*

The CS creates s. 948.061, F.S., which requires the department to develop a graduated risk assessment and alert system that continuously identifies, assesses, and monitors offenders who: (1) have previously been placed on community supervision and have a history of committing multiple community supervision violations, or have previously been incarcerated; and (2) have experienced one or more of the following risk factors that could make the offender more likely to pose a danger to other persons:

- Attempted suicide or severe depression
- Marital instability or history of domestic violence
- History of substance abuse
- Unemployment or substantial financial difficulties
- History of violence, particularly if it involved strangers
- Other risk factors identified by the department

Because offenders with these risk factors may pose a serious threat to the community, the department must place them on an elevated alert status and provide the highest level of supervision available until the department believes that the offender no longer poses an increased threat. Methods of increasing supervision include more frequent office and home visits; more contact with employers, families, and the neighborhood; increased referrals to community mental health facilities and assistance programs; and development of emergency plans to facilitate detention and apprehension if necessary.

In every report and at every hearing concerning an offender who is identified as high-risk, the correctional probation officer must provide the court with a clear, complete, and concise cumulative and integrated chronology of the offender's criminal history and prior terms of community supervision, including all violations of community supervision.

##### *Suggested Amendment of Rules of Procedure Regarding Release Pending Hearing*

The CS includes a legislative request for the Supreme Court to revise the Florida Rules of Criminal Procedure relating to release on bail pending revocation of probation. The specific suggestion is that the Rules mandate detention of an offender who is awaiting a hearing for alleged violation of probation or community control if the offender is currently on community supervision for a forcible felony or if the offender had previously been convicted of a forcible felony.

## **Substance Abuse**

### *Screening and Assessment of Inmates*

Section 944.473(2), F.S., relates to substance abuse treatment programs for incarcerated inmates. The statute requires that the inprocessing of an inmate into the prison system must include screening and assessment to determine if the inmate meets the department's criteria for mandatory participation in a substance abuse program. A number of factors which the department must consider in developing its criteria are specified in the statute. The CS amends s. 944.473(2)(b), F.S., to add previous substantive or technical violations related to substance abuse while on community supervision as one of these factors.

### *Substance Abuse Services after Release from Incarceration*

Section 944.705, F.S., requires the department to provide a standardized release orientation program to eligible inmates. Included is a needs assessment to determine whether the inmate needs any basic support services after release. The department may contract with public or private entities to provide identified basic support services. The CS amends s. 944.705(4), F.S., to provide that substance abuse treatment is a basic support service for any inmate who was identified as having a need for such treatment, but who was not provided an opportunity to receive treatment in prison. Section 944.473(2), F.S., is amended to establish a complementary requirement that the department automatically identify such inmates as needing substance abuse treatment as a basic support service.

The CS creates a new subsection (4) of s. 944.705, F.S., to require that an inmate who demonstrates a history of substance abuse or addiction be referred to the nearest community substance abuse program as part of the release orientation program.

### *Standard Condition Requiring Drug Testing*

Section 948.03(1)(k)2., F.S., sets forth a standard condition of probation or community control requiring an offender to submit to random drug testing intermittently throughout the term of supervision if: (1) the offense was a controlled substance violation; and (2) the period of probation immediately follows incarceration in the state correctional system. The CS expands this condition of random, intermittent drug testing to require testing of offenders who are under supervision for a controlled substance violation and who were previously imprisoned for an offense related to controlled substances.

### *Standard Condition Prohibiting Use of Drugs*

Section 948.03(1)(m), F.S., is a standard condition of probation or community control that prohibits "using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a physician." The CS modifies this condition to prohibit use of alcohol to excess or the possession or use of a controlled substance or drug unless prescribed by a physician. In *Alston v. State*, 646 So.2d 184 (Fla. 1994), the Florida Supreme Court held that evidence of a single positive drug test is not sufficient to prove violation of the standard condition prohibiting use of intoxicants to

excess. By adding “using” a controlled substance or drug to the condition, a single positive drug test could be the basis for a violation of this condition.

In *Alston, supra*, the Court noted that a single positive drug test could support a finding that an offender had violated a condition directing that the offender live without violating the law. Rules 3.986(e) and (f) of the Florida Rules of Criminal Procedure include such a standard condition in the Order of Probation and the Order of Community Control. Inexplicably, it is not a statutory standard condition of probation or community control. Therefore, the CS further amends s. 948.03(1), F.S., to add a standard condition requiring that the offender remain at liberty without violating the law.

### **Recommendation as to Disposition of Violations**

Section 6 of the CS amends s. 948.06, F.S., to require the department to make a written recommendation for disposition by the court of violations that are either admitted by the offender or adjudged by the court. The recommendation must include the reasons for the determination and an evaluation of:

- the appropriateness or inappropriateness of community facilities, programs, or services for treatment of the offender
- the department’s ability to provide an adequate level of supervision, and what is an adequate level of supervision
- the existence of other treatment modalities that could be useful but that do not exist in the community

A recommendation as to disposition and evaluation of these factors is also required if the court orders the department to prepare a presentence investigation report pursuant to s. 948.015, F.S., prior to imposition of an original sentence.

In addition to the above, the recommendation must also include a summary of the offender’s prior supervision history, including his or her participation in treatment, educational, and vocational programs, and any other relevant actions or circumstances. The court may specify whether the report is to be oral or written, and may waive the requirement for an individual case or certain types of cases. The recommendation requirement does not prohibit the department from making other reports or recommendations that are required by law or requested by the court.

### **Codifying Requirement to Review and Report on Serious Felony Violations**

The CS creates s. 948.062, F.S., which codifies a significant portion of DOC procedure #302.025 issued on March 10, 2000. The procedure and proposed statutory change require the department to review the circumstances of any violation of probation or community control in which any supervised offender was arrested for:

- Murder
- Sexual battery
- Sexual performance by a child

- Kidnapping, false imprisonment, or luring of a child
- Lewd and lascivious battery or lewd and lascivious molestation
- Aggravated child abuse
- Robbery with a firearm or other deadly weapon, home invasion robbery, or carjacking
- Aggravated stalking

The review and report requirement also applies to arrest of a supervised offender for:

- A forcible felony if the supervised offender is designated as a sexual predator
- DUI manslaughter or vehicular or vessel homicide, if the offender was under supervision for an offense involving death or injury resulting from a driving incident

The review must document whether the supervision met rules, policies, and procedures and whether supervision practices were followed. The reviews are to be provided to OPPAGA annually, and OPPAGA must analyze the reviews and provide a written report to the President of the Senate and the Speaker of the House of Representatives. OPPAGA's report must include any systemic deficiencies that are identified in the management or judicial disposition of high-risk offenders, including any patterns of non-compliance and any inconsistent or inefficient judicial case processing. The report must also include any recommendations for improving the community supervision program.

### **Technical Violation Notification Letter**

The CS also amends s. 948.06, F.S., to expressly authorize use of a notification letter to advise the judge of technical violations that are not new felony offenses. Use of such a technical notification letter must be directed by the chief judge of the judicial circuit. The direction must be in writing and specify the types of violations that are to be reported by notification letter, any exceptions to its use, the means of submission of the letter, and the court's intended action in response. Similar arrangements have been previously used in individual judicial circuits, including in the 12th Judicial Circuit where Carlie Brucia lived.

### **Electronic Monitoring**

The CS amends s. 948.03(1)(a), F.S., to provide more detail to the current standard condition to report to the probation officer as ordered. The most significant addition is a provision giving the department the discretion to order electronic monitoring as a reporting requirement. Section 948.03(3)(a)1., F.S., currently states that the department has discretion to place a community controllee on electronic monitoring. However, failure of an offender to submit to the department's order cannot be the basis for violation of community control. *See Carson v. State*, 531 So.2d 1069 (Fla. 4th Dist. 1988). The department expects that this amendment will provide sufficient authority to enforce refusal to submit to monitoring as a violation of the condition to report. It also will enable the department to better control the allocation of electronic monitoring equipment to the offenders that it assesses as high risk. However, the CS retains the court's authority to expressly order electronic monitoring, so the department will have to consider the possibility that a court may find it appropriate to enter such an order in a specific case.

### **Law Enforcement Assistance with Arrest and Transport**

The CS amends s. 948.06(1), F.S., to require local law enforcement officers to assist probation officers in making warrantless arrests of alleged violators and transporting the violators to the county jail if requested. Section 947.22(2), F.S., is amended to make the same provision for warrantless arrests and transport of parole violators.

### **Allegations of Inability to Pay**

The CS amends s. 948.06(5), F.S., to require the department to include the offender's statement of his or her ability to pay with any violation report that is submitted because of the offenders failure to pay court-ordered financial obligations. It also amends s. 948.032, F.S., to reiterate that the defendant is responsible for proving inability to pay restitution.

### **Bond for persons placed on community supervision**

Section 903.0473, F.S., is created to provide the court with an option to order an offender to post a bond as a condition of probation to ensure his or her appearance at subsequent court proceedings. The bond is an appearance bond that must be filed by a bail bond agent. The bail bond agent is required to produce the offender to the court within 72 hours notice by the court or the clerk of court. The bail bond agent is also required to surrender the offender to the Sheriff upon notice by a probation officer that the offender has violated a condition of community supervision. The new provision provides for estreatment and forfeiture of the bond if the bail bond agent fails to present the offender at the time noticed by the court or the clerk. The relationship between the bail agent and the "probationer" is regulated by chapters 903 and 648, F.S., unless in conflict with the new provision.

Although this provision refers to an appearance bond, the requirement for involvement of a bail bond agent appears to require the use of a surety bond to secure appearance. Also, there is no provision of estreatment of the bond for failure of the bail bond agent to produce the offender to the sheriff upon notice by a probation officer of a community supervision violation.

### **Effective date**

The act becomes effective upon becoming a law unless expressly provided otherwise.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The option for a community supervision appearance bond may result in additional income for bail bond agents, who will charge the offender on community supervision for the bond. There is also the potential for a reciprocal negative impact upon the offender. The amount of any financial impact depends upon how often courts utilize the option to require a bond, and whether the offender would otherwise be kept in custody by the court.

C. Government Sector Impact:

The Criminal Justice Impact Conference assesses the impact of the CS on the need for prison bed space as minimal-indeterminate.

It can be anticipated that some provisions of the CS will have a fiscal impact upon the Department of Corrections, although the amount of such impact has not been determined. The department informally expressed that the requirement to review and report on serious felony violations in SB 2284 would require the employment of additional FTE in inspector general positions at a significant cost. The CS addresses this issue by removing the requirement that each review be conducted by the department's IG, and leaving the method of review to the department. Development of the risk assessment and alert system, expansion of provision of substance abuse services after release from imprisonment, expansion of drug testing to additional offenders, and the requirement for a recommendation as to disposition of violators may also result in some increase in workload or expenditures. However, there is no indication that the cost of any of these changes would be significant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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