

# 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.)

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 172

SPONSOR: Criminal Justice Committee and Senator Lynn

SUBJECT: Probation & Community Control

DATE: March 30, 2005

REVISED: \_\_\_\_\_

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

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## I. Summary:

This Committee Substitute for Senate Bill 172 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 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), which must provide the Legislature with a summary and recommendation. The bill also requires law enforcement officers, to the extent possible, to assist with arrest and transport of violators upon request, and requires the arrest of an offender without warrant if there are reasonable grounds to believe that the offender is in violation of probation or community control in a material respect and it is known that the offender has a history of convictions for violence.

This bill amends sections 947.22 and 948.06, and creates sections 948.061 and 948.062, of the Florida Statutes.

## II. Present Situation:

On February 1, 2004, a car wash security camera recorded the abduction of 11-year old Carlie Brucia as she walked home from a friend's house in Sarasota, Florida. 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'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 less than 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. His trial is scheduled to begin on November 7, 2005.

## **OVERVIEW OF PROBATION AND COMMUNITY CONTROL**

As of December 31, 2004, there were 146,692 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)	122,477
Standard probation	99,609
Drug offender probation	17,711
Sex offender probation	3,221
Administrative probation	1,936
Community Control	10,908
Standard community control	10,615
Sex offender community control	293

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 probation or community control committed theft, forgery, or fraud as their most serious offense. Another one-fourth are on community supervision for committing a drug offense. Murder/manslaughter, sexual offenses, robbery, and other violent crimes 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, 39 percent have no prior community supervision commitments and 82 percent have never been sentenced to prison.

### **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 require 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. Non-completion 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 ch. 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. As of December 31, 2004, there were 2,886 offenders on active or active-suspense control release supervision.

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

Chapter 948, F.S., includes an extensive list of terms of probation or community control which may be imposed by a sentencing court, as well as 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, the offender may be arrested without warrant by any law enforcement officer or parole and probation supervisor who is aware of his or her 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.

### **III. Effect of Proposed Changes:**

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

The bill amends s. 948.06(1), F.S., to require local law enforcement officers, to the extent possible, 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. Currently, local law enforcement officers are not required to assist in making warrantless arrests.

#### **High Risk Offenders**

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

The bill 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 more than one 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
- Any other risk factor 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.

The bill also requires a correctional probation officer to provide the court with certain criminal history and background information on high-risk offenders in each report submitted to the court and at each hearing before the court. The required information includes 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.

The department is given the authority to adopt rules that are necessary to implement Section 3 of the bill which requires the development of risk assessments and the elevated alert system, and reporting to the court on a violator's history.

### ***Warrantless Arrest of Offenders with a History of Convictions for Violence***

The bill adds a new section to s. 948.06(1), F.S., requiring the immediate, warrantless arrest of an offender if: (1) a law enforcement officer or parole or probation supervisor has reasonable grounds to believe that the offender has violated the conditions of his or her community supervision in a material respect; and (2) the officer or supervisor is aware that the offender has a history of convictions for violence.

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

Section 5 of the bill 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.

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

The bill creates s. 948.062, F.S., which codifies a significant portion of the department's rules which were in place at the time of Carlie Brucia's death. 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 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 by March 1, 2006. OPPAGA's report must include any systemic deficiencies that are identified in the management of high-risk offenders, including any patterns of non-compliance by correctional probation officers. The report must also include any recommendations for improving the community supervision program.

Language has been added to the bill which provides that funds do not need to be appropriated for this act to be implemented.

#### **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:**

None.

##### **C. Government Sector Impact:**

The Criminal Justice Impact Conference assesses the impact of the bill on the need for prison bed space as minimal-indeterminate (from SB 2284, 2004 session).

Local law enforcement agencies have expressed concern that the requirement for local law enforcement agencies to assist with the transportation of community supervision violators upon the request of a correctional probation officer could have a significant, fiscal impact on the local agencies. However, the amount of the impact has not been determined.

#### **The Agency's Estimated Costs to Provide Criminal History**

The Department of Corrections asserts that the requirement to provide a complete chronology of an offender's criminal history and prior terms of probation or community control in each report submitted to the court and at each hearing before the court will result in a significant increase in workload and expenditures. The department does not provide an estimate of the fiscal impact of the hearing requirement.

Senate Bill 2284 (2004 Legislative Session) included a similar high risk offender reporting requirement. Based upon the department's fiscal analysis of SB 2284, providing enhanced information in reports for high risk offenders would require an additional 19 correctional probation officers, 2 supervisors, and 3 clerical support personnel. The cost of these additional personnel would be approximately \$1.6 million.

#### **The Agency's Estimated Cost to Review and Report New Law Violations**

The department estimates that the bill's requirement for review and reporting of serious offenses would require 12 new correctional officer senior inspectors, 1 supervisor, and 1 secretary specialist at a cost of \$1,159,280 for fiscal year 2005-2006.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

## **VIII. Summary of 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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