



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Personal responsibility -- This bill encourages responsible behavior by persons subject to probation or community control by increasing the penalties for violation of probation or community control.

#### B. EFFECT OF PROPOSED CHANGES:

Probation is a form of community supervision requiring specified contacts with parole and probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.<sup>1</sup> Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.<sup>2</sup>

Offenders on probation and community control must comply with the statutory terms and conditions set forth in s. 948.03, F.S.<sup>3</sup> These terms and conditions require probationers and community controllees to:

- Report to the probation and parole supervisors as directed.
- Permit such supervisors to visit him or her at his or her home or elsewhere.
- Work faithfully at suitable employment insofar as may be possible.
- Remain within a specified place.
- Make reparation or restitution.
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility.
- Support his or her legal dependents to the best of his or her ability.
- Pay any monies owed to the crime victims compensation trust fund.
- Pay the application fee and costs of the public defender.
- Not associate with persons engaged in criminal activities.
- Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.
- Not possess, carry, or own any firearm unless authorized by the court and consented to by the probation officer.
- Not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician.
- Not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- Submit to the drawing of blood or other biological specimens, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

In addition to complying with the above terms and conditions, offenders on community control are subject to intensive supervision and surveillance, which may include but is not limited to:

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<sup>1</sup> Section 948.001(5), F.S.

<sup>2</sup> Section 948.001(2), F.S.

<sup>3</sup> See ss. 948.03 and 948.101, F.S.

- Specified contact with the parole and probation officer.
- Confinement to an agreed-upon residence during hours away from employment and public service activities.
- Mandatory public service.
- Supervision by the Department of Corrections by means of an electronic monitoring device or system.

Section 948.06, F.S., provides procedures regarding violation of the terms and conditions required of a person on probation or community control. Upon violation, the offender is arrested and brought before the sentencing court. At the first hearing on the violation, the offender is advised of the charge. If the

offender admits the charge, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If the offender denies having violated the terms of the probation or community control, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. Unless dismissed, the court must conduct a hearing and determine whether the offender has violated. If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If probation or community control is revoked, the court must adjudicate the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed for the offense for which the offender was placed on probation or into community control.

The Criminal Punishment Code, ss. 921.002 through 921.0027, F.S., is applicable to all offenses committed on or after October 1, 1998. The code provides a mathematical formula that determines the minimum sentence that a court may impose upon an offender. The minimum sentence is calculated based upon the total number of points assessed against the offender. If the total points exceed 44, the court must subtract 28 points and multiply by 75%. The resulting number is the minimum number of months in state prison that the offender must serve. However, the court may find that one of the mitigating circumstances specified in s. 921.0026, F.S., warrants a downward departure. Where a downward departure is granted, the court may sentence the offender to less than the minimum sentence.

If an offender is resentenced after being found guilty of violating the terms of his or her probation or community control, the total points are re-calculated, adding 12 points for a violation resulting from committing a new felony offense, or 6 points for any violation other than a new felony offense. The effect of the additional points may compel the sentencing court to impose a new state prison sentence, unless the court finds grounds for a downward departure.

### **Effect of Bill**

This bill creates the "Anti-Murder Act".

This bill creates s. 903.0351, F.S., which provides that a violent felony offender of special concern arrested for violation of probation or community control may not be granted bail prior to the resolution of the probation or community control violation hearing unless the violation is based solely on a failure to pay costs, fines, or restitution payments. A corresponding change is made to s. 948.06(4), F.S., regarding violent felony offenders of special concern who are captured in a county other than the sentencing county, denying bail to such offenders unless the violation is for a failure to pay costs, fines, or restitution payments.

This bill amends s. 948.06, F.S., regarding violation of probation, creating a new subsection (8) regarding violent felony offenders of special concern. The bill defines "violent felony offenders of special concern" as a person who is:

- On probation or community control related to the commission of a qualifying offense committed on or after July 1, 2007,
- On probation or community control for any offense committed on or after July 1, 2007, and has previously been convicted of or had adjudication withheld for a qualifying offense,
- On probation or community control for any offense committed on or after July 1, 2007, and is found to have violated that probation or community control by committing a qualifying offense.
  
- On probation or community control and has previously been found by a court to be a habitual violent felony offender pursuant to s. 775.084(1)(b) and has committed a qualifying offense on or after July 1, 2007.
- On probation or community control and has previously been found by a court to be a three-time violent felony offender pursuant to s. 775.084(1)(c) and has committed a qualifying offense on or after July 1, 2007.
- On probation or community control and has previously been found by a court to be a sexual predator pursuant to s. 775.21 and has committed a qualifying offense on or after July 1, 2007.

This bill defines a "qualifying offense" as:

- Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), F.S., or luring or enticing a child under s. 787.025, F.S..
- Murder or attempted murder under s. 782.04, F.S., attempted felony murder under s. 782.051, F.S., or manslaughter under s. 782.07, F.S.
- Aggravated battery or attempted aggravated battery under s. 784.045, F.S.
- Sexual battery or attempted sexual battery under s. 794.011(2), (3), or (4), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious batter under s. 800.04(4), F.S., or lewd or lascivious molestation under s. 800.04(5)(b).
- Robbery or attempted robbery under s. 812.13, F.S., carjacking under s. 812.133, F.S., or home invasion robbery under s. 812.135, F.S.
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025, F.S.
- Sexual performance of a child or attempted sexual performance of a child under s. 827.071, F.S.
- Computer pornography under s. 847.0135(2) or (3), F.S., transmission of child pornography under s. 847.0137, F.S., or selling or buying of minors under s. 847.0145, F.S.
- Poisoning food or water under s. 859.01, F.S.
- Abuse of a dead human body under s. 872.06, F.S.
- Any burglary offense or attempted burglary offense that is either a first or second degree felony under s. 810.02(2) or (3), F.S.
- Arson or attempted arson under s. 806.01(1), F.S.
- Aggravated assault under s. 784.021, F.S.
- Aggravated stalking under s. 784.048(3), (4), (5), or (7), F.S.
- Aircraft piracy under s. 860.16, F.S.
- Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4), F.S.
- Treason under s. 876.32, F.S.
- An offense in another jurisdiction that would meet the definitions of these offenses if committed in Florida.

This bill provides that, as to any person who is a violent felony offender of special concern, who violates any condition of probation other than a failure to pay costs, fines, or restitution:

- No bail is allowed.
- The court may not dismiss the violation unless the court conducts a recorded hearing at which the state and the offender are represented.

If the court finds that a violent felony offender of special concern has violated any nonmonetary terms of probation or community control, the court must decide whether to revoke the probation or community control. If the court determines by a preponderance of the evidence that a violent felony offender of special concern poses a danger to the community, the court shall revoke probation or community control and shall sentence the offender up to the statutory maximum under the Criminal Sentencing Code, s. 921.0024, F.S. The court is allowed to consider a number of factors in determining the danger to the community posed by the offender's release. The court must enter a written order in support of its finding in determining whether the offender poses a danger to the community.

This bill amends s. 921.0024, F.S., to modify the formula for determining the Total Sentence Points under the Criminal Punishment Code. A violent felony offender of special concern violator is assessed 9 points for a violation that does not involve a new felony conviction (as opposed to the 6 points assessed under current law), and is assessed 18 points for a violation that involves a new felony conviction (as opposed to the 12 points assessed under current law). These additional points will have the effect of lengthening the minimum sentence required by the Criminal Punishment Code.

C. SECTION DIRECTORY:

**Section 1.** Names the act.

**Section 2.** Creates s. 903.0351, F.S., denying bail for violent felony offenders of special concern.

**Section 3.** Amends s. 948.06, F.S., defining violent felony offender of special concern and requiring a violation of probation hearing.

**Section 4.** Amends s. 921 .0024, F.S., to increase points for community sanction violations.

**Sections 5, 6 and 7.** Republishes statutes that may be affected by the changes made in the bill.

**Section 8.** Provides an effective date of July 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Governor's Office of Policy and Budget produced the following estimated General Revenue impact for new prison bed construction and operations pursuant to the provisions of HB 29:

Fiscal Year	Amount
2007-2008	\$ 20,051,295
2008-2009	\$ 52,744,265
2009-2010	\$ 21,841,142
Total	\$ 94,636,702

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

There could be increased utilization of county jail beds because of provisions that require the offender to be held in custody pending final disposition by the courts. The incremental impact of HB 29 is indeterminate since data are not available to indicate the number of these offenders that are held in local jails under existing law.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference met on February 16, 2007 and produced the following prison bed impact for HB 29:

HB 29		
Number of Prison Beds Needed		
Fiscal Year	Projected Additional Annual Prison Beds	Projected Cumulative Prison Beds
2007-2008	31	31
2008-2009	224	255
2009-2010	385	640
2010-2011	385	1,025
2011-2012	316	1,341
<b>Total</b>	<b>1,341</b>	<b>1,341</b>

The courts indicate that passage of the bill may generate the need for additional judges. Any such impact can be accounted for in the court's annual judicial certification order requesting new judgeships.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill could have a significant fiscal impact on counties but would appear to be exempt from the provisions of Article VII, Section 18 (a) of the state constitution because it amends a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Subparagraph 3. (lines 113 – 116) defines a “violent felony offender of special concern” as a person who is on probation or community control for any offense committed on or after July 1, 2007, *and is found to have violated that probation or community control by committing a qualifying offense*. Thus, one element of this definition requires a *judge* to determine that the probationer violated their probation by committing a qualifying offense.

In contrast, lines 117 – 127 define a “violent felony offender of special concern” as a person who is on probation or community control who has previously been found by a court to be a habitual violent felony offender (subparagraph 4.), three-time violent felony offender (subparagraph 5.), or sexual predator (subparagraph 6.), and who has *committed a qualifying offense on or after July 1, 2007*. As written, a probationer who also happens to be a habitual violent felony offender need only *commit* a qualifying offense to fall within the definition of a “violent felony offender of special concern.” This raises the following issues:

- i. How would authorities know that such a probationer *committed* a qualifying offense?
- ii. Who determines whether such a probationer *committed* a qualifying offense?

### D. STATEMENT OF THE SPONSOR

The bill is carefully crafted to target only the most serious offenders. The bill creates a new class of criminals called violent felony offenders of special concern. These individuals are the worst of the worst. They have committed sex crimes and serious crimes of violence and are on probation. Those who break the rules, thus squandering the extraordinary opportunity given them, will receive special attention from our justice system. This bill helps protect the citizens of our state.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES