

ENROLLED
HB 7035

2010 Legislature

1 A bill to be entitled
2 An act relating to criminal justice; repealing s. 16.07,
3 F.S., relating to a prohibition on the Attorney General
4 collecting any fee for defending any supposed offender;
5 repealing s. 30.11, F.S., relating to a sheriff's or
6 deputy's required place of residence; amending ss. 384.34
7 and 796.08, F.S.; removing references to conform to
8 changes made by the act; amending s. 775.0877, F.S.;
9 removing penalty provisions relating to criminal
10 transmission of HIV; amending s. 893.13, F.S.; removing
11 penalty provisions relating to obsolete community
12 residential drug punishment centers; amending s. 921.187,
13 F.S.; removing sentencing provisions relating to community
14 residential drug punishment centers and quarantine of
15 offenders convicted of criminal transmission of HIV;
16 repealing s. 944.293, F.S., relating to initiation of
17 restoration of civil rights; amending s. 948.001, F.S.;
18 removing the definition of the term "criminal quarantine
19 community control"; repealing s. 948.034, F.S., relating
20 to community residential drug punishment centers;
21 repealing s. 948.0345, F.S., relating to community service
22 alternative to fines; amending s. 984.04, F.S.; removing a
23 reference to conform to changes made by the act; amending
24 ss. 948.101 and 948.11, F.S.; removing references to
25 criminal quarantine community control; repealing s.
26 957.125, F.S., relating to authorization for the
27 Correctional Privatization Commission to contract for
28 youthful offender correctional facilities; repealing s.

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29 985.4891, F.S., relating to sheriff's training and respect
30 programs; amending ss. 958.046, 985.445, 985.47, 985.483,
31 985.494, and 985.645, F.S.; conforming provisions to the
32 repeal of s. 985.4891, F.S.; providing an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. Section 16.07, Florida Statutes, is repealed.

37 Section 2. Section 30.11, Florida Statutes, is repealed.

38 Section 3. Subsection (5) of section 384.34, Florida
39 Statutes, is amended to read:

40 384.34 Penalties.—

41 (5) Any person who violates the provisions of s. 384.24(2)
42 commits a felony of the third degree, punishable as provided in
43 s. ss. 775.082, s. 775.083, or s. 775.084, ~~and 775.0877(7)~~. Any
44 person who commits multiple violations of the provisions of s.
45 384.24(2) commits a felony of the first degree, punishable as
46 provided in s. ss. 775.082, s. 775.083, or s. 775.084, ~~and~~
47 ~~775.0877(7)~~.

48 Section 4. Subsections (3) and (7) of section 775.0877,
49 Florida Statutes, are amended to read:

50 775.0877 Criminal transmission of HIV; procedures;
51 penalties.—

52 (3) An offender who has undergone HIV testing pursuant to
53 subsection (1), and to whom positive test results have been
54 disclosed pursuant to subsection (2), who commits a second or
55 subsequent offense enumerated in paragraphs (1)(a)-(n), commits
56 criminal transmission of HIV, a felony of the third degree,

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57 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
58 ~~subsection (7)~~. A person may be convicted and sentenced
59 separately for a violation of this subsection and for the
60 underlying crime enumerated in paragraphs (1)(a)-(n).

61 ~~(7) In addition to any other penalty provided by law for~~
62 ~~an offense enumerated in paragraphs (1)(a)-(n), the court may~~
63 ~~require an offender convicted of criminal transmission of HIV to~~
64 ~~serve a term of criminal quarantine community control, as~~
65 ~~described in s. 948.001.~~

66 Section 5. Subsection (5) of section 796.08, Florida
67 Statutes, is amended to read:

68 796.08 Screening for HIV and sexually transmissible
69 diseases; providing penalties.—

70 (5) A person who:

71 (a) Commits or offers to commit prostitution; or

72 (b) Procures another for prostitution by engaging in
73 sexual activity in a manner likely to transmit the human
74 immunodeficiency virus, and who, prior to the commission of such
75 crime, had tested positive for human immunodeficiency virus and
76 knew or had been informed that he or she had tested positive for
77 human immunodeficiency virus and could possibly communicate such
78 disease to another person through sexual activity commits
79 criminal transmission of HIV, a felony of the third degree,
80 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
81 ~~or s. 775.0877(7)~~. A person may be convicted and sentenced
82 separately for a violation of this subsection and for the
83 underlying crime of prostitution or procurement of prostitution.

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84 Section 6. Subsections (10), (11), and (12) of section
85 893.13, Florida Statutes, are amended to read:

86 893.13 Prohibited acts; penalties.—

87 ~~(10) Notwithstanding any provision of the sentencing~~
88 ~~guidelines or the Criminal Punishment Code to the contrary, on~~
89 ~~or after October 1, 1993, any defendant who:~~

90 ~~(a) Violates subparagraph (1) (a)1., subparagraph (1) (c)2.,~~
91 ~~subparagraph (1) (d)2., subparagraph (2) (a)1., or paragraph~~
92 ~~(5) (a); and~~

93 ~~(b) Has not previously been convicted, regardless of~~
94 ~~whether adjudication was withheld, of any felony, other than a~~
95 ~~violation of subparagraph (1) (a)1., subparagraph (1) (c)2.,~~
96 ~~subparagraph (1) (d)2., subparagraph (2) (a)1., or paragraph~~
97 ~~(5) (a),~~

98
99 ~~may be required by the court to successfully complete a term of~~
100 ~~probation pursuant to the terms and conditions set forth in s.~~
101 ~~948.034(1), in lieu of serving a term of imprisonment.~~

102 ~~(11) Notwithstanding any provision of the sentencing~~
103 ~~guidelines or the Criminal Punishment Code to the contrary, on~~
104 ~~or after January 1, 1994, any defendant who:~~

105 ~~(a) Violates subparagraph (1) (a)2., subparagraph (2) (a)2.,~~
106 ~~paragraph (5) (b), or paragraph (6) (a); and~~

107 ~~(b) Has not previously been convicted, regardless of~~
108 ~~whether adjudication was withheld, of any felony, other than a~~
109 ~~violation of subparagraph (1) (a)2., subparagraph (2) (a)2.,~~
110 ~~paragraph (5) (b), or paragraph (6) (a),~~

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112 ~~may be required by the court to successfully complete a term of~~
 113 ~~probation pursuant to the terms and conditions set forth in s.~~
 114 ~~948.034(2), in lieu of serving a term of imprisonment.~~

115 (10)~~(12)~~ If a person violates any provision of this
 116 chapter and the violation results in a serious injury to a state
 117 or local law enforcement officer as defined in s. 943.10,
 118 firefighter as defined in s. 633.30, emergency medical
 119 technician as defined in s. 401.23, paramedic as defined in s.
 120 401.23, employee of a public utility or an electric utility as
 121 defined in s. 366.02, animal control officer as defined in s.
 122 828.27, volunteer firefighter engaged by state or local
 123 government, law enforcement officer employed by the Federal
 124 Government, or any other local, state, or Federal Government
 125 employee injured during the course and scope of his or her
 126 employment, the person commits a felony of the third degree,
 127 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 128 If the injury sustained results in death or great bodily harm,
 129 the person commits a felony of the second degree, punishable as
 130 provided in s. 775.082, s. 775.083, or s. 775.084.

131 Section 7. Section 921.187, Florida Statutes, is amended
 132 to read:

133 921.187 Disposition and sentencing; alternatives;
 134 restitution.—

135 (1) The alternatives provided in this section for the
 136 disposition of criminal cases shall be used in a manner that
 137 will best serve the needs of society, punish criminal offenders,
 138 and provide the opportunity for rehabilitation.

139 ~~(a)~~ If the offender does not receive a state prison

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140 sentence, the court may:

141 (a)1- Impose a split sentence whereby the offender is to
 142 be placed on probation upon completion of any specified period
 143 of such sentence, which period may include a term of years or
 144 less.

145 (b)2- Make any other disposition that is authorized by
 146 law.

147 (c)3- Place the offender on probation with or without an
 148 adjudication of guilt pursuant to s. 948.01.

149 (d)4- Impose a fine and probation pursuant to s. 948.011
 150 when the offense is punishable by both a fine and imprisonment
 151 and probation is authorized.

152 (e)5- Place the offender into community control requiring
 153 intensive supervision and surveillance pursuant to chapter 948.

154 (f)6- Impose, as a condition of probation or community
 155 control, a period of treatment which shall be restricted to a
 156 county facility, a Department of Corrections probation and
 157 restitution center, a probation program drug punishment
 158 treatment community, or a community residential or
 159 nonresidential facility, excluding a community correctional
 160 center as defined in s. 944.026, which is owned and operated by
 161 any qualified public or private entity providing such services.
 162 Before admission to such a facility, the court shall obtain an
 163 individual assessment and recommendations on the appropriate
 164 treatment needs, which shall be considered by the court in
 165 ordering such placements. Placement in such a facility, except
 166 for a county residential probation facility, may not exceed 364
 167 days. Placement in a county residential probation facility may

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168 not exceed 3 years. Early termination of placement may be
169 recommended to the court, when appropriate, by the center
170 supervisor, the supervising probation officer, or the probation
171 program manager.

172 (g)7. Sentence the offender pursuant to s. 922.051 to
173 imprisonment in a county jail when a statute directs
174 imprisonment in a state prison, if the offender's cumulative
175 sentence, whether from the same circuit or from separate
176 circuits, is not more than 364 days.

177 (h)8. Sentence the offender who is to be punished by
178 imprisonment in a county jail to a jail in another county if
179 there is no jail within the county suitable for such prisoner
180 pursuant to s. 950.01.

181 (i)9. Require the offender to participate in a work-
182 release or educational or technical training program pursuant to
183 s. 951.24 while serving a sentence in a county jail, if such a
184 program is available.

185 (j)10. Require the offender to perform a specified public
186 service pursuant to s. 775.091.

187 (k)11. Require the offender who violates chapter 893 or
188 violates any law while under the influence of a controlled
189 substance or alcohol to participate in a substance abuse
190 program.

191 (l)1.12.a. Require the offender who violates any criminal
192 provision of chapter 893 to pay an additional assessment in an
193 amount up to the amount of any fine imposed, pursuant to ss.
194 938.21 and 938.23.

195 2.b. Require the offender who violates any provision of s.

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196 893.13 to pay an additional assessment in an amount of \$100,
 197 pursuant to ss. 938.25 and 943.361.

198 (m)~~13~~. Impose a split sentence whereby the offender is to
 199 be placed in a county jail or county work camp upon the
 200 completion of any specified term of community supervision.

201 (n)~~14~~. Impose split probation whereby upon satisfactory
 202 completion of half the term of probation, the Department of
 203 Corrections may place the offender on administrative probation
 204 pursuant to s. 948.013 for the remainder of the term of
 205 supervision.

206 (o)~~15~~. Require residence in a state probation and
 207 restitution center or private drug treatment program for
 208 offenders on community control or offenders who have violated
 209 conditions of probation.

210 (p)~~16~~. Impose any other sanction which is provided within
 211 the community and approved as an intermediate sanction by the
 212 county public safety coordinating council as described in s.
 213 951.26.

214 (q)~~17~~. Impose, as a condition of community control,
 215 probation, or probation following incarceration, a requirement
 216 that an offender who has not obtained a high school diploma or
 217 high school equivalency diploma or who lacks basic or functional
 218 literacy skills, upon acceptance by an adult education program,
 219 make a good faith effort toward completion of such basic or
 220 functional literacy skills or high school equivalency diploma,
 221 as defined in s. 1003.435, in accordance with the assessed adult
 222 general education needs of the individual offender.

223 ~~(b)1. Notwithstanding any provision of former s. 921.001~~

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224 ~~or s. 921.002 to the contrary, on or after October 1, 1993, the~~
 225 ~~court may require any defendant who violates s. 893.13(1)(a)1.,~~
 226 ~~(1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), and meets the criteria~~
 227 ~~described in s. 893.13(10), to successfully complete a term of~~
 228 ~~probation pursuant to the terms and conditions set forth in s.~~
 229 ~~948.034(1), in lieu of serving a term of imprisonment.~~

230 ~~2. Notwithstanding any provision of former s. 921.001 or~~
 231 ~~s. 921.002 to the contrary, on or after October 1, 1993, the~~
 232 ~~court may require any defendant who violates s. 893.13(1)(a)2.,~~
 233 ~~(2)(a)2., (5)(b), or (6)(a), and meets the criteria described in~~
 234 ~~s. 893.13(11), to successfully complete a term of probation~~
 235 ~~pursuant to the terms and conditions set forth in s. 948.034(2),~~
 236 ~~in lieu of serving a term of imprisonment.~~

237 ~~(2) In addition to any other penalty provided by law for~~
 238 ~~an offense enumerated in s. 775.0877(1)(a)-(n), if the offender~~
 239 ~~is convicted of criminal transmission of HIV pursuant to s.~~
 240 ~~775.0877, the court may sentence the offender to criminal~~
 241 ~~quarantine community control as described in s. 948.001.~~

242 (2)(3) The court shall require an offender to make
 243 restitution under s. 775.089, unless the court finds clear and
 244 compelling reasons not to order such restitution. If the court
 245 does not order restitution, or orders restitution of only a
 246 portion of the damages, as provided in s. 775.089, the court
 247 shall state the reasons on the record in detail. An order
 248 requiring an offender to make restitution to a victim under s.
 249 775.089 does not remove or diminish the requirement that the
 250 court order payment to the Crimes Compensation Trust Fund under
 251 chapter 960.

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252 Section 8. Section 944.293, Florida Statutes, is repealed.

253 Section 9. Subsections (4) through (10) of section
254 948.001, Florida Statutes, are redesignated as subsections (3)
255 through (9), respectively, and subsection (3) of that section is
256 amended to read:

257 948.001 Definitions.—As used in this chapter, the term:

258 ~~(3) "Criminal quarantine community control" means~~
259 ~~intensive supervision, by officers with restricted caseloads,~~
260 ~~with a condition of 24-hour-per-day electronic monitoring, and a~~
261 ~~condition of confinement to a designated residence during~~
262 ~~designated hours.~~

263 Section 10. Section 948.034, Florida Statutes, is
264 repealed.

265 Section 11. Section 948.0345, Florida Statutes, is
266 repealed.

267 Section 12. Subsection (1) of section 948.04, Florida
268 Statutes, is amended to read:

269 948.04 Period of probation; duty of probationer; early
270 termination.—

271 (1) Defendants found guilty of felonies who are placed on
272 probation shall be under supervision not to exceed 2 years
273 unless otherwise specified by the court. No defendant placed on
274 probation pursuant to s. 948.012(1) ~~or s. 948.034~~ is subject to
275 the probation limitations of this subsection. A defendant who is
276 placed on probation or community control for a violation of
277 chapter 794 or chapter 827 is subject to the maximum level of
278 supervision provided by the supervising agency, and that
279 supervision shall continue through the full term of the court-

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280 imposed probation or community control.

281 Section 13. Section 948.101, Florida Statutes, is amended
282 to read:

283 948.101 Terms and conditions of community control ~~and~~
284 ~~criminal quarantine community control.~~

285 (1) The court shall determine the terms and conditions of
286 community control. Conditions specified in this subsection do
287 not require oral pronouncement at the time of sentencing and may
288 be considered standard conditions of community control.

289 ~~(a)~~ The court shall require intensive supervision and
290 surveillance for an offender placed into community control,
291 which may include but is not limited to:

292 (a)1. Specified contact with the parole and probation
293 officer.

294 (b)2. Confinement to an agreed-upon residence during hours
295 away from employment and public service activities.

296 (c)3. Mandatory public service.

297 (d)4. Supervision by the Department of Corrections by
298 means of an electronic monitoring device or system.

299 (e)5. The standard conditions of probation set forth in s.
300 948.03.

301 ~~(b) For an offender placed on criminal quarantine~~
302 ~~community control, the court shall require:~~

303 ~~1. Electronic monitoring 24 hours per day.~~

304 ~~2. Confinement to a designated residence during designated~~
305 ~~hours.~~

306 (2) The enumeration of specific kinds of terms and
307 conditions does not prevent the court from adding thereto any

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308 other terms or conditions that the court considers proper.
309 However, the sentencing court may only impose a condition of
310 supervision allowing an offender convicted of s. 794.011, s.
311 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 to reside in
312 another state if the order stipulates that it is contingent upon
313 the approval of the receiving state interstate compact
314 authority. The court may rescind or modify at any time the terms
315 and conditions theretofore imposed by it upon the offender in
316 community control. However, if the court withholds adjudication
317 of guilt or imposes a period of incarceration as a condition of
318 community control, the period may not exceed 364 days, and
319 incarceration shall be restricted to a county facility, a
320 probation and restitution center under the jurisdiction of the
321 Department of Corrections, a probation program drug punishment
322 phase I secure residential treatment institution, or a community
323 residential facility owned or operated by any entity providing
324 such services.

325 ~~(3) The court may place a defendant who is being sentenced~~
326 ~~for criminal transmission of HIV in violation of s. 775.0877 on~~
327 ~~criminal quarantine community control. The Department of~~
328 ~~Corrections shall develop and administer a criminal quarantine~~
329 ~~community control program emphasizing intensive supervision with~~
330 ~~24-hour-per-day electronic monitoring. Criminal quarantine~~
331 ~~community control status must include surveillance and may~~
332 ~~include other measures normally associated with community~~
333 ~~control, except that specific conditions necessary to monitor~~
334 ~~this population may be ordered.~~

335 Section 14. Subsection (1) of section 948.11, Florida

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336 Statutes, is amended to read:

337 948.11 Electronic monitoring devices.—

338 (1) ~~(a)~~ The Department of Corrections may, at its
339 discretion, electronically monitor an offender sentenced to
340 community control.

341 ~~(b) The Department of Corrections shall electronically~~
342 ~~monitor an offender sentenced to criminal quarantine community~~
343 ~~control 24 hours per day.~~

344 Section 15. Section 957.125, Florida Statutes, is
345 repealed.

346 Section 16. Section 985.4891, Florida Statutes, is
347 repealed.

348 Section 17. Section 958.046, Florida Statutes, is amended
349 to read:

350 958.046 Placement in county-operated boot camp programs
351 for youthful offenders.—In counties where there are county-
352 operated youthful offender boot camp programs, other than boot
353 camps described in s. 958.04 ~~or sheriff's training and respect~~
354 ~~programs in s. 985.4891~~, the court may sentence a youthful
355 offender to such a boot camp. In county-operated youthful
356 offender boot camp programs, juvenile offenders shall not be
357 commingled with youthful offenders.

358 Section 18. Section 985.445, Florida Statutes, is amended
359 to read:

360 985.445 Cases involving grand theft of a motor vehicle.—If
361 the offense committed by the child was grand theft of a motor
362 vehicle, the court:

363 (1) Upon a first adjudication for a grand theft of a motor

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364 vehicle, may place the child in a sheriff's training and respect
365 program, ~~unless the child is ineligible under s. 985.4891,~~ and
366 shall order the child to complete a minimum of 50 hours of
367 community service.

368 (2) Upon a second adjudication for grand theft of a motor
369 vehicle which is separate and unrelated to the previous
370 adjudication, may place the child in a sheriff's training and
371 respect program, ~~unless the child is ineligible under s.~~
372 ~~985.4891,~~ and shall order the child to complete a minimum of 100
373 hours of community service.

374 (3) Upon a third adjudication for grand theft of a motor
375 vehicle which is separate and unrelated to the previous
376 adjudications, shall place the child in a sheriff's training and
377 respect program or other treatment program, ~~unless the child is~~
378 ~~ineligible under s. 985.4891,~~ and shall order the child to
379 complete a minimum of 250 hours of community service.

380 Section 19. Paragraph (a) of subsection (6) of section
381 985.47, Florida Statutes, is amended to read:

382 985.47 Serious or habitual juvenile offender.—

383 (6) ACTION ON RECOMMENDATIONS.—The treatment and placement
384 recommendations shall be submitted to the court for further
385 action under this subsection:

386 (a) If it is recommended that placement in a serious or
387 habitual juvenile offender program or facility is inappropriate,
388 the court shall make an alternative disposition ~~under s.~~
389 ~~985.4891 or other alternative sentencing as applicable,~~ using
390 the recommendation as a guide.

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391 Section 20. Paragraph (a) of subsection (6) of section
392 985.483, Florida Statutes, is amended to read:

393 985.483 Intensive residential treatment program for
394 offenders less than 13 years of age.—

395 (6) ACTION ON RECOMMENDATIONS.—The treatment and placement
396 recommendations shall be submitted to the court for further
397 action under this subsection:

398 (a) If it is recommended that placement in an intensive
399 residential treatment program for offenders less than 13 years
400 of age is inappropriate, the court shall make an alternative
401 disposition ~~under s. 985.4891 or other alternative sentencing as~~
402 ~~applicable,~~ using the recommendation as a guide.

403 Section 21. Subsection (1) of section 985.494, Florida
404 Statutes, is amended to read:

405 985.494 Commitment programs for juvenile felony
406 offenders.—

407 (1) Notwithstanding any other law and regardless of the
408 child's age, a child who is adjudicated delinquent, or for whom
409 adjudication is withheld, for an act that would be a felony if
410 committed by an adult, shall be committed to:

411 ~~(a) A sheriff's training and respect program under s.~~
412 ~~985.4891 if the child has participated in an early delinquency~~
413 ~~intervention program as provided in s. 985.61.~~

414 (a) ~~(b)~~ A program for serious or habitual juvenile
415 offenders under s. 985.47 or an intensive residential treatment
416 program for offenders less than 13 years of age under s.
417 985.483, if the child has participated in an early delinquency
418 intervention program and has completed a sheriff's training and

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419 | respect program.

420 | (b)~~(e)~~ A maximum-risk residential program, if the child
 421 | has participated in an early delinquency intervention program,
 422 | has completed a sheriff's training and respect program, and has
 423 | completed a program for serious or habitual juvenile offenders
 424 | or an intensive residential treatment program for offenders less
 425 | than 13 years of age. The commitment of a child to a maximum-
 426 | risk residential program must be for an indeterminate period,
 427 | but may not exceed the maximum term of imprisonment that an
 428 | adult may serve for the same offense.

429 | Section 22. Paragraph (d) of subsection (2) of section
 430 | 985.645, Florida Statutes, is amended to read:

431 | 985.645 Protective action response.—

432 | (2) The department shall adopt rules under ss. 120.536(1)
 433 | and 120.54 that:

434 | (d) ~~Except as provided in s. 985.4891(9) for specified~~
 435 | ~~certified officers,~~ Require each employee who was not certified
 436 | by the department in protective action response prior to July 1,
 437 | 2006, to receive his or her protective action response
 438 | certification by September 30, 2006, or within 90 calendar days
 439 | following his or her date of hire, whichever date is later.

440 | Section 23. This act shall take effect July 1, 2010.