

Committee Substitute for
Committee Substitute for Senate Bill No. 2336

An act relating to probation and community control; amending s. 948.001, F.S.; deleting provisions authorizing the Department of Corrections to collect certain fees as a part of administrative probation; amending s. 948.01, F.S.; correcting a cross-reference; transferring and renumbering provisions governing probation and community control as s. 948.10(10), F.S.; transferring and renumbering provisions authorizing a split sentence of probation or community control and imprisonment as s. 948.012(1), F.S.; prohibiting a private entity from providing probation or supervision services to certain offenders; transferring and renumbering provisions relating to violations of community control as s. 948.10(9), F.S.; transferring and renumbering provisions restricting the placement of certain offenders into community control as s. 948.10(2), F.S.; transferring and renumbering provisions authorizing split sentencing as s. 948.012(2) and (3), F.S.; transferring and renumbering provisions relating to drug offender probation as s. 948.20, F.S.; transferring and renumbering provisions governing community control and criminal quarantine community control as s. 948.101(3), F.S.; transferring and renumbering provisions relating to administration probation as s. 948.013, F.S.; amending s. 948.011, F.S.; clarifying circumstances under which the court may impose a fine or place an offender on probation or community control; amending s. 948.03, F.S.; conforming cross-references; providing for submission of blood or other biological specimens as a standard condition of probation; transferring and renumbering provisions relating to intensive supervision and surveillance as s. 948.101, F.S.; authorizing the court to impose additional terms or conditions of community control; providing certain limitations; transferring and renumbering provisions governing electronic monitoring as s. 948.11(2), F.S.; amending s. 948.11, F.S.; transferring and renumbering provisions governing the diagnosis, evaluation, and treatment of certain sex offenders as s. 948.31, F.S.; transferring and renumbering provisions governing additional terms and conditions of probation or community control for certain sex offenses as s. 948.30, F.S.; clarifying a requirement for submitting blood and other specimens; transferring and renumbering provisions relating to residential treatment as s. 948.035, F.S.; transferring and renumbering provisions relating to work programs as s. 948.036, F.S.; transferring and renumbering provisions relating to education and learning as a condition of probation or community control as s. 948.037, F.S.; transferring and renumbering provisions relating to the submission of blood or other biological specimens as s. 948.014, F.S.; transferring and renumbering provisions relating to a batterers' intervention program as s. 948.038, F.S.; creating s. 948.039, F.S.; authorizing the court to impose special terms and conditions of probation or community control, including requiring the offender to attend an HIV/AIDS awareness program and pay

certain costs; amending s. 948.06, F.S., relating to procedures following an arrest of an offender for a violation of probation or community control; transferring and renumbering provisions relating to the arrest of a person for certain sex offenses as s. 948.32, F.S.; amending s. 948.09, F.S.; requiring an offender under addiction-recovery supervision to pay the cost of supervision; amending s. 948.10, F.S.; correcting a cross-reference; amending ss. 948.04, 440.02, 775.21, 812.0155, 921.0017, 921.187, 947.23, and 958.14, F.S.; revising cross-references, to conform; reenacting ss. 944.4731(2)(b) and (7)(b), 948.01(8), and 948.06(5), F.S., relating to the Addiction-Recovery Supervision Program, when the court may place a defendant on probation or into community control, and violations of probation or community control, respectively, for the purpose of incorporating the amendment to s. 948.09, F.S., in references thereto; reenacting s. 947.1747, F.S., relating to community control as a special condition of parole, for the purpose of incorporating the amendment to s. 948.10, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 948.001, Florida Statutes, is amended to read:

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

(1) “Administrative probation” means a form of noncontact supervision in which an offender who presents a low risk of harm to the community may, upon satisfactory completion of half the term of probation, be transferred ~~placed~~ by the Department of Corrections to a nonreporting status ~~to a nonreporting status~~ until expiration of the term of supervision. ~~The department is authorized to collect an initial processing fee of up to \$50 for each probationer reduced to administrative probation. Such offender is exempt from further payment for cost of supervision as required in s. 948.09.~~

Section 2. Paragraph (c) of subsection (3) of section 948.01, Florida Statutes, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(3) If, after considering the provisions of subsection (2) and the offender’s prior record or the seriousness of the offense, it appears to the court in the case of a felony disposition that probation is an unsuitable dispositional alternative to imprisonment, the court may place the offender in a community control program as provided in s. 948.10. Or, in a case of prior disposition of a felony commitment, upon motion of the offender or the department or upon its own motion, the court may, within the period of its retained jurisdiction following commitment, suspend the further execution of the disposition and place the offender in a community control program upon such terms as the court may require. The court may consult with a local offender advisory council pursuant to s. 948.90 with respect to the placement of an offender into community control. Not later than 3 working days before

the hearing on the motion, the department shall forward to the court all relevant material on the offender's progress while in custody. If this sentencing alternative to incarceration is utilized, the court shall:

(c) Require the department to provide notifications pursuant to s. 948.10(7) ~~s. 948.10(6)~~.

Section 3. Present subsection (8) of section 948.10, Florida Statutes, is redesignated as subsection (11) of section 948.10, Florida Statutes, and present subsection (5) of section 948.01, Florida Statutes, is transferred and renumbered as subsection (10) of section 948.10, Florida Statutes, to read:

948.10 Community control programs.—

(10)(5) Upon completion of the sanctions imposed in the community control plan before the expiration of the term ordered by the court, the department may petition the court to discharge the offender from community control supervision or to return the offender to a program of regular probation supervision. In considering the petition, the court should recognize the limited staff resources committed to the community control program, the purpose of the program, and the offender's successful compliance with the conditions set forth in the order of the court.

Section 4. Present subsection (6) of section 948.01, Florida Statutes, is transferred and renumbered as subsection (1) of section 948.012, Florida Statutes, to read:

948.012 Split sentence of probation or community control and imprisonment.—

(1)(6) Whenever punishment by imprisonment for a misdemeanor or a felony, except for a capital felony, is prescribed, the court, in its discretion, may, at the time of sentencing, impose a split sentence whereby the defendant is to be placed on probation or, with respect to any such felony, into community control upon completion of any specified period of such sentence which may include a term of years or less. In such case, the court shall stay and withhold the imposition of the remainder of sentence imposed upon the defendant and direct that the defendant be placed upon probation or into community control after serving such period as may be imposed by the court. The period of probation or community control shall commence immediately upon the release of the defendant from incarceration, whether by parole or gain-time allowances.

Section 5. Subsection (7) of section 948.01, Florida Statutes, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(7) ~~In no case shall~~ The imposition of sentence may not be suspended and the defendant thereupon placed on probation or into community control unless the ~~such~~ defendant is placed under the custody of the department or another public or private entity. A private entity may not provide probation-

ary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court.

Section 6. Present subsection (9) of section 948.10, Florida Statutes, is redesignated as subsection (12) of section 948.10, Florida Statutes, and present subsection (9) of section 948.01, Florida Statutes, is transferred and renumbered as subsection (9) of section 948.10, Florida Statutes, to read:

948.10 Community control programs.—

(9) Procedures governing violations of community control shall be the same as those described in s. 948.06 with respect to probation.

Section 7. Present subsections (2) through (7) of section 948.10, Florida Statutes, are redesignated as subsections (3) through (8), respectively, and present subsection (10) of section 948.01, Florida Statutes, is transferred and renumbered as subsection (2) of section 948.10, Florida Statutes, to read:

948.10 Community control programs.—

~~(2)~~(40) An offender may not be placed in community control if:

(a) Convicted of or adjudication withheld for a forcible felony as defined in s. 776.08, and

(b) Previously convicted of or adjudication withheld for a forcible felony as defined in s. 776.08.

Nothing in this subsection prohibits placement of certain inmates on community control pursuant to s. 947.1747. For the purposes of this subsection, a forcible felony does not include manslaughter or burglary.

Section 8. Present subsection (11) of section 948.01, Florida Statutes, is transferred and renumbered as subsection (2) of section 948.012, Florida Statutes, to read:

948.012 Split sentence of probation or community control and imprisonment.—

~~(2)~~(11) The court may also impose a split sentence whereby the defendant is sentenced to a term of probation which may be followed by a period of incarceration or, with respect to a felony, into community control, as follows:

(a) If the offender meets the terms and conditions of probation or community control, any term of incarceration may be modified by court order to eliminate the term of incarceration.

(b) If the offender does not meet the terms and conditions of probation or community control, the court may revoke, modify, or continue the probation or community control as provided in s. 948.06. If the probation or community control is revoked, the court may impose any sentence that it could have imposed at the time the offender was placed on probation or

community control. The court may not provide credit for time served for any portion of a probation or community control term toward a subsequent term of probation or community control. However, the court may not impose a subsequent term of probation or community control which, when combined with any amount of time served on preceding terms of probation or community control for offenses pending before the court for sentencing, would exceed the maximum penalty allowable as provided in s. 775.082. Such term of incarceration shall be served under applicable law or county ordinance governing service of sentences in state or county jurisdiction. This paragraph does not prohibit any other sanction provided by law.

Section 9. Present subsection (12) of section 948.01, Florida Statutes, is transferred and renumbered as subsection (3) of section 948.012, Florida Statutes, and amended to read:

948.012 Split sentence of probation or community control and imprisonment.—

~~(3)~~(12) The court may also impose split probation whereby, upon satisfactory completion of half the term of probation, the Department of Corrections may place the offender on administrative probation as defined in s. 948.001 for the remainder of the term of supervision.

Section 10. Present subsection (13) of section 948.01, Florida Statutes, is transferred and renumbered as section 948.20, Florida Statutes, and amended to read:

948.20 (13) Drug offender probation.—If it appears to the court upon a hearing that the defendant is a chronic substance abuser whose criminal conduct is a violation of s. 893.13(2)(a) or (6)(a), the court may either adjudge the defendant guilty or stay and withhold the adjudication of guilt; and, in either case, it may stay and withhold the imposition of sentence and place the defendant on drug offender probation.

(1)(a) The Department of Corrections shall develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which includes provision for supervision of offenders in accordance with a specific treatment plan. The program may include the use of graduated sanctions consistent with the conditions imposed by the court. Drug offender probation status shall include surveillance and random drug testing, and may include those measures normally associated with community control, except that specific treatment conditions and other treatment approaches necessary to monitor this population may be ordered.

~~(2)~~(b) Offenders placed on drug offender probation are subject to revocation of probation as provided in s. 948.06.

Section 11. Present subsection (14) of section 948.01, Florida Statutes, is transferred and renumbered as subsection (3) of section 948.101, Florida Statutes, to read:

948.101 Terms and conditions of community control and criminal quarantine community control.—

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

Section 12. Present subsection (15) of section 948.01, Florida Statutes, is transferred and renumbered as subsection (2) of 948.013, Florida Statutes, and amended to read:

948.013 Administrative probation.—

(1) The Department of Corrections may establish procedures for transferring an offender to administrative probation. The department may collect an initial processing fee of up to \$50 for each probationer transferred to administrative probation. The offender is exempt from further payment for the cost of supervision as required in s. 948.09.

(2)(15) Effective for an offense committed on or after July 1, 1998, a person is ineligible for placement on administrative probation if the person is sentenced to or is serving a term of probation or community control, regardless of the conviction or adjudication, for committing, or attempting, conspiring, or soliciting to commit, any of the felony offenses described in s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent; s. 787.025; chapter 794; s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135; or s. 847.0145.

Section 13. Section 948.011, Florida Statutes, is amended to read:

948.011 When court may impose fine and place on probation or into community control as an alternative to imprisonment.—When the law authorizes the placing of a defendant on probation, and when the defendant's offense is punishable by both fine and imprisonment, the trial court may, in its discretion, impose a fine upon him or her and place him or her on probation or into community control as an alternative to imprisonment.

Section 14. Subsection (1) of section 948.03, Florida Statutes, as amended by section 136 of chapter 2003-402, Laws of Florida, is amended to read:

948.03 Terms and conditions of probation or community control.—

~~(1) The court shall determine the terms and conditions of probation or community control. Conditions specified in this section paragraphs (a)-(m) do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. Conditions specified in paragraphs (a)-(m) and (2)(a) do not require oral pronouncement at sentencing and may be considered standard conditions of community control. These conditions may include among them the following, that the probationer or offender in community control shall:~~

- (a) Report to the probation and parole supervisors as directed.
 - (b) Permit such supervisors to visit him or her at his or her home or elsewhere.
 - (c) Work faithfully at suitable employment insofar as may be possible.
 - (d) Remain within a specified place.
 - (e) Make reparation or restitution to the aggrieved party for the damage or loss caused by his or her offense in an amount to be determined by the court. The court shall make such reparation or restitution a condition of probation, unless it determines that clear and compelling reasons exist to the contrary. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in s. 775.089, it shall state on the record in detail the reasons therefor.
 - (f) Effective July 1, 1994, and applicable for offenses committed on or after that date, make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility. The court, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the felony probationer, the present and potential future financial needs and earning ability of the probationer, and dependents, and other appropriate factors.
 - (g) Support his or her legal dependents to the best of his or her ability.
 - (h) Make payment of the debt due and owing to the state under s. 960.17, subject to modification based on change of circumstances.
 - (i) Pay any application fee assessed under s. 27.52(2)(a) and attorney's fees and costs assessed under s. 938.29, subject to modification based on change of circumstances.
 - (j) Not associate with persons engaged in criminal activities.
 - (k)1. 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.
2. If the offense was a controlled substance violation and the period of probation immediately follows a period of incarceration in the state correction system, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3).
- (l) Be prohibited from possessing, carrying, or owning any firearm unless authorized by the court and consented to by the probation officer.

(m) Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a physician. The probationer or community controllee shall not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

(n) Submit to the drawing of blood or other biological specimens as prescribed in ss. 948.014 and 943.325, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

~~(n) Attend an HIV/AIDS awareness program consisting of a class of not less than 2 hours or more than 4 hours in length, the cost for which shall be paid by the offender, if such a program is available in the county of the offender's residence.~~

~~(o) Pay not more than \$1 per month during the term of probation or community control to a nonprofit organization established for the sole purpose of supplementing the rehabilitative efforts of the Department of Corrections.~~

Section 15. Present subsection (2) of section 948.03, Florida Statutes, is transferred and renumbered as subsection (1) of section 948.101, Florida Statutes, and amended to read:

948.101 Terms and conditions of community control and criminal quarantine community control.—

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

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

1. Specified contact with the parole and probation officer.
2. Confinement to an agreed-upon residence during hours away from employment and public service activities.
3. Mandatory public service.
4. Supervision by the Department of Corrections by means of an electronic monitoring device or system.
5. The standard conditions of probation set forth in s. 948.03(1) and (2).

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

1. Electronic monitoring 24 hours per day.

2. Confinement to a designated residence during designated hours.

(2) The enumeration of specific kinds of terms and conditions does not prevent the court from adding thereto any other terms or conditions that the court considers proper. However, the sentencing court may only impose a condition of supervision allowing an offender convicted of s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 to reside in another state if the order stipulates that it is contingent upon the approval of the receiving state interstate compact authority. The court may rescind or modify at any time the terms and conditions theretofore imposed by it upon the offender in community control. However, if the court withholds adjudication of guilt or imposes a period of incarceration as a condition of community control, the period may not exceed 364 days, and incarceration shall be restricted to a county facility, a probation and restitution center under the jurisdiction of the Department of Corrections, a probation program drug punishment phase I secure residential treatment institution, or a community residential facility owned or operated by any entity providing such services.

Section 16. Present subsection (3) of section 948.03, Florida Statutes, is transferred and renumbered as section 948.11, Florida Statutes, and amended to read:

~~948.11 Electronic monitoring devices.—Pursuant to chapter 287, the department shall issue a request for proposal for electronic monitoring devices to be utilized by the department for purposes of electronic monitoring under this section or any other section of law which authorizes electronic monitoring. Electronic monitoring devices certified for use by the department must be licensed by the FCC, must be capable of maintaining full operation on a backup power source for 8 hours, and must meet such other necessary and vital specifications as may be set by the department for tamper-alert, efficient, and economical usage. The provisions of this section do not apply to passive devices.~~

~~(1)(3)(a)1.~~ The Department of Corrections may, at its discretion, electronically monitor an offender sentenced to community control.

~~(b)2.~~ The Department of Corrections shall electronically monitor an offender sentenced to criminal quarantine community control 24 hours per day.

~~(2)(b)~~ Any offender placed on community control who violates the terms and conditions of community control and is restored to community control may be supervised by means of an electronic monitoring device or system.

~~(3)(e)~~ For those offenders being electronically monitored, the Department of Corrections shall develop procedures to determine, investigate, and report the offender's noncompliance with the terms and conditions of sentence 24 hours per day. All reports of noncompliance shall be immediately investigated by a community control officer.

~~(4)(d)~~ The Department of Corrections may contract with local law enforcement agencies to assist in the location and apprehension of offenders who are in noncompliance as reported by the electronic monitoring system.

This contract is intended to provide the department a means for providing immediate investigation of noncompliance reports, especially after normal office hours.

(5) Any person being electronically monitored by the department as a result of placement on community control shall be required to pay a surcharge as provided in s. 948.09(2).

Section 17. Present subsection (4) of section 948.03, Florida Statutes, is transferred and renumbered as section 948.31, Florida Statutes, and amended to read:

948.31 (4) Diagnosis, evaluation, and treatment of offenders placed on probation or community control for certain sex offenses or child exploitation.— The court shall require a diagnosis and evaluation to determine the need of a probationer or offender in community control for treatment. If the court determines that a need therefor is established by such diagnosis and evaluation process, the court shall require outpatient counseling as a term or condition of probation or community control for any person who was found guilty of any of the following, or whose plea of guilty or nolo contendere to any of the following was accepted by the court:

(1)(a) Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as defined in s. 800.04.

(2)(b) Sexual battery, as defined in chapter 794, against a child.

(3)(e) Exploitation of a child as provided in s. 450.151, or for prostitution.

Such counseling shall be required to be obtained from a community mental health center, a recognized social service agency providing mental health services, or a private mental health professional or through other professional counseling. The plan for counseling for the individual shall be provided to the court for review.

Section 18. Present subsection (5) of section 948.03, Florida Statutes, is transferred and renumbered as section 948.30, Florida Statutes, and amended to read:

948.30 (5) Additional terms and conditions of probation or community control for certain sex offenses.— Conditions imposed pursuant to this ~~section subsection, as specified in paragraphs (a) and (b),~~ do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this ~~section subsection.~~

(1)(a) Effective for probationers or community controllees whose crime was committed on or after October 1, 1995, and who are placed under supervision for violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, the court must impose the following conditions in addition to all other standard and special conditions imposed:

(a)1. A mandatory curfew from 10 p.m. to 6 a.m. The court may designate another 8-hour period if the offender's employment precludes the above

specified time, and such alternative is recommended by the Department of Corrections. If the court determines that imposing a curfew would endanger the victim, the court may consider alternative sanctions.

(b)2. If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate, as prescribed by the court. The 1,000-foot distance shall be measured in a straight line from the offender's place of residence to the nearest boundary line of the school, day care center, park, playground, or other place where children congregate. The distance may not be measured by a pedestrian route or automobile route.

(c)3. Active participation in and successful completion of a sex offender treatment program with therapists specifically trained to treat sex offenders, at the probationer's or community controllee's own expense. If a specially trained therapist is not available within a 50-mile radius of the probationer's or community controllee's residence, the offender shall participate in other appropriate therapy.

(d)4. A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, the offender's therapist, and the sentencing court.

(e)5. If the victim was under the age of 18, a prohibition, until successful completion of a sex offender treatment program, on unsupervised contact with a child under the age of 18, unless authorized by the sentencing court without another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the sentencing court.

(f)6. If the victim was under age 18, a prohibition on working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate.

(g)7. Unless otherwise indicated in the treatment plan provided by the sexual offender treatment program, a prohibition on viewing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.

(h)8. A requirement that the probationer or community controllee must submit a specimen ~~two specimens~~ of blood or other approved biological specimen ~~specimens~~ to the Florida Department of Law Enforcement to be registered with the DNA data bank.

(i)9. A requirement that the probationer or community controllee make restitution to the victim, as ordered by the court under s. 775.089, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.

(j)10. Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

(2)(b) Effective for a probationer or community controllee whose crime was committed on or after October 1, 1997, and who is placed on sex offender probation for a violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, in addition to any other provision of this subsection, the court must impose the following conditions of probation or community control:

(a)1. As part of a treatment program, participation at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. A polygraph examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders, where available, and shall be paid for by the sex offender. The results of the polygraph examination shall not be used as evidence in court to prove that a violation of community supervision has occurred.

(b)2. Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the supervising officer.

(c)3. A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.

(d)4. If there was sexual contact, a submission to, at the probationer's or community controllee's expense, an HIV test with the results to be released to the victim or and/or the victim's parent or guardian.

(e)5. Electronic monitoring when deemed necessary by the community control or probation officer and his or her supervisor, and ordered by the court at the recommendation of the Department of Corrections.

Section 19. Subsection (6) of section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation ~~or community control.~~ —

(6) The enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto such other or others as it considers proper. However, the sentencing court may only impose a condition of supervision allowing an offender convicted of s. 794.011, s. 800.04, s. 827.071, or s. 847.0145, to reside in another state, if the order stipulates that it is contingent upon the approval of the receiving state interstate compact authority. The court may rescind or modify at any time the terms and conditions theretofore imposed by it upon the probationer ~~or offender in community control.~~ However, if the court withholds adjudication of guilt or imposes a period of incarceration as a condition of probation ~~or community control,~~ the period shall not exceed 364 days, and incarceration shall be restricted to either a county facility, a probation and restitution center under the jurisdiction of the Department of Corrections, a probation program drug punishment phase I secure residential treatment institution, or a community residential facility owned or operated by any entity providing such services.

Section 20. Present subsection (7) of section 948.03, Florida Statutes, is transferred and renumbered as section 948.035, Florida Statutes, and amended to read:

948.035 (7)(a) Residential treatment as a condition of probation or community control.—

(1) If the court imposes a period of residential treatment or incarceration as a condition of probation or community control, the residential treatment or incarceration shall be restricted to the following facilities:

~~(a)1.~~ A Department of Corrections probation and restitution center;

~~(b)2.~~ A probation program drug punishment treatment community;

~~(c)3.~~ A community residential facility which is owned and operated by any public or private entity, excluding a community correctional center as defined in s. 944.026; or

~~(d)4.~~ A county-owned facility.

~~(2)(b)~~ It is the intent of the Legislature that a county jail be used as the last available alternative for placement of an offender as a condition of probation. However, this shall not create a right of placement for the probationer, nor shall it restrict judicial discretion in ordering such treatment or incarceration.

~~(3)(e)~~ Prior to admission to such a facility or treatment community, the court shall obtain an individual assessment and recommendation on the appropriate treatment needs pursuant to ~~chapter 953 or~~ the Community Control Implementation Manual which shall be considered by the court in ordering such placements. Placement in such a facility or center, or in the phase I secure residential phase of a probation program drug punishment treatment community, shall not exceed 364 days. Early completion of an offender's placement shall be recommended to the court, when appropriate, by the facility or center supervisor, by the supervising probation officer, or by the program manager. ~~However, with respect to the placement of a probationer pursuant to chapter 953, such placement shall not be completed until satisfactory completion of the drug punishment program. Termination for cause from such a program shall be pursuant to s. 953.25(4).~~ The Department of Corrections is authorized to contract with appropriate agencies for provision of services.

Section 21. Present subsection (8) of section 948.03, Florida Statutes, is transferred and renumbered as section 948.036, Florida Statutes, and amended to read:

948.036 (8)(a) Work programs as a condition of probation, community control, or other court-ordered community supervision.—

(1) Whenever an offender is required by the court to participate in any work program under the provisions of this chapter, enters into the pretrial intervention program pursuant to s. 948.08, or volunteers to work in a supervised work program conducted by a specified state, county, municipal, or community service organization or to work for the victim, either as an alternative to monetary restitution or as a part of the rehabilitative or community control program, the offender shall be considered an employee of the state for the purposes of chapter 440.

(2)(b) In determining the average weekly wage, unless otherwise determined by a specific funding program, all remuneration received from the employer shall be considered a gratuity, and the offender shall not be entitled to any benefits otherwise payable under s. 440.15, regardless of whether the offender may be receiving wages and remuneration from other employment with another employer and regardless of his or her future wage-earning capacity. The provisions of this section subsection do not apply to any person performing labor under a sentence of a court to perform community services as provided in s. 316.193.

Section 22. Present subsection (9) of section 948.03, Florida Statutes, is transferred and renumbered as section 948.037, Florida Statutes, and amended to read:

948.037 (9)(a) Education and learning as a condition of probation or community control.—

(1) As a condition of community control, probation, or probation following incarceration, the court shall require an offender who has not obtained a high school diploma or high school equivalency diploma or who lacks basic or functional literacy skills, upon acceptance by an adult education program, to make a good faith effort toward completion of such basic or functional literacy skills or high school equivalency diploma, as defined in s. 1003.435, in accordance with the assessed adult general education needs of the individual offender. The court shall not revoke community control, probation, or probation following incarceration because of the offender's inability to achieve such skills or diploma but may revoke community control, probation, or probation following incarceration if the offender fails to make a good faith effort to achieve such skills or diploma. The court may grant early termination of community control, probation, or probation following incarceration upon the offender's successful completion of the approved program. As used in this subsection, "good faith effort" means the offender is enrolled in a program of instruction and is attending and making satisfactory progress toward completion of the requirements.

(2)(b) A juvenile on community control who is a public school student must attend a public adult education program or a dropout prevention program, pursuant to s. 1003.53, which includes a second chance school or an alternative to expulsion, if the school district where the juvenile is enrolled offers such programs, unless the principal of the school determines that special circumstances warrant continuation in the regular educational school program.

(3)(e) If a juvenile on community control attends a regular educational school program because a public adult education program or dropout prevention program, which includes a second chance school or an alternative to expulsion, is not available in the school district, the identity of the juvenile on community control, the nature of the felony offense committed by the juvenile, and the conditions of community control must be made known to each of the student's teachers.

Section 23. Present subsection (10) of section 948.03, Florida Statutes, is transferred and renumbered as subsections (1) and (2) of section 948.014, Florida Statutes, and amended to read:

948.014 (10) Requirement to submit to drawing of blood or other biological specimens.—

(1) As a condition of probation, community control, or any other court-ordered community supervision, the court shall order persons convicted of offenses specified in s. 943.325 to submit to the drawing of the blood or other biological specimens as prescribed in that section as a condition of the probation, community control, or other court-ordered community supervision.

(2) For the purposes of this section subsection, conviction shall include a finding of guilty, or entry of a plea of nolo contendere or guilty, regardless of adjudication, or, in the case of a juvenile, the finding of delinquency.

Section 24. Present subsection (11) of section 948.03, Florida Statutes, is transferred and renumbered as subsection (3) of section 948.014, Florida Statutes, and amended to read:

948.014 Requirement to submit to drawing of blood or other biological specimens.—

(3)(11) Any order issued pursuant to this section subsection (10) shall also require the convicted person to reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Florida Department of Law Enforcement.

Section 25. Present subsection (12) of section 948.03, Florida Statutes, is transferred and renumbered as section 948.038, Florida Statutes, and amended to read:

948.038 (12) Batterers' intervention program as a condition of probation, community control, or other court-ordered community supervision.—As a condition of probation, community control, or any other court-ordered community supervision, the court shall order a person convicted of an offense of domestic violence, as defined in s. 741.28, to attend and successfully complete a batterers' intervention program unless the court determines that the person does not qualify for the batterers' intervention program pursuant to s. 741.325. ~~Effective July 1, 2002,~~ The batterers' intervention program must be a program certified under s. 741.32 and the offender must pay the cost of attending the program.

Section 26. Section 948.039, Florida Statutes, is created to read:

948.039 Special terms and conditions of probation or community control imposed by court order.—The court may determine any special terms and conditions of probation or community control. The terms and conditions should be reasonably related to the circumstances of the offense committed and appropriate for the offender. The court shall impose the special terms and conditions by oral pronouncement at sentencing and include the terms and conditions in the written sentencing order. Special terms and conditions may include, but are not limited to, requirements that the offender:

(1) Attend an HIV/AIDS awareness program consisting of a class of not less than 2 hours or more than 4 hours in length, if such a program is

available in the county of the offender's residence. The offender shall pay the cost of attending the program.

(2) Pay not more than \$1 per month during the term of probation or community control to a nonprofit organization established for the sole purpose of supplementing the rehabilitative efforts of the Department of Corrections.

Section 27. Subsection (1) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(1)(a) Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer or offender in community control has violated his or her probation or community control in a material respect, any law enforcement officer who is aware of the probationary or community control status of the probationer or offender in community control or any parole or probation supervisor may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant wherever found and forthwith return him or her to the court granting such probation or community control.

(b) Any committing magistrate may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the probationer or offender, returnable forthwith before the court granting such probation or community control.

(c) Any parole or probation supervisor, any officer authorized to serve criminal process, or any peace officer of this state is authorized to serve and execute such warrant.

(d) Upon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant under s. 901.02, the probationary period is tolled until the court enters a ruling on the violation. Notwithstanding the tolling of probation as provided in this subsection, the court shall retain jurisdiction over the offender for any violation of the conditions of probation or community control that is alleged to have occurred during the tolling period. The probation officer is permitted to continue to supervise any offender who remains available to the officer for supervision until the supervision expires pursuant to the order of probation or community control or until the court revokes or terminates the probation or community control, whichever comes first.

(2)(a) The court, upon the probationer or offender being brought before it, shall advise him or her of such charge of violation and, if such charge is admitted to be true, may forthwith revoke, modify, or continue the probation or community control or place the probationer into a community control program.

(b) If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or

admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation or the offender into community control.

(c) If such violation of probation or community control is not admitted by the probationer or offender, the court may commit him or her 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.

(d) If such charge is not at that time admitted by the probationer or offender and if it is not dismissed, the court, as soon as may be practicable, shall give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel.

(e) After such hearing, the court may revoke, modify, or continue the probation or community control or place the probationer into community control. If such probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer or offender on probation or into community control.

(f) Notwithstanding s. 775.082, when a period of probation or community control has been tolled, upon revocation or modification of the probation or community control, the court may impose a sanction with a term that when combined with the amount of supervision served and tolled, exceeds the term permissible pursuant to s. 775.082 for a term up to the amount of the tolled period of supervision.

(g) If the court dismisses an affidavit alleging a violation of probation or community control, the offender's probation or community control shall continue as previously imposed, and the offender shall receive credit for all tolled time against his or her term of probation or community control.

Section 28. Present subsection (2) of section 948.06, Florida Statutes, is transferred and renumbered as section 948.32, Florida Statutes, and amended to read:

948.32 (2)(a) Requirements of law enforcement agency upon arrest of persons for certain sex offenses.—

(1) When any state or local law enforcement agency investigates or arrests a person for committing, or attempting, soliciting, or conspiring to commit, a violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 827.071, s. 847.0133, s. 847.0135, or s. 847.0145, the law enforcement agency shall contact the Department of Corrections to verify whether the person under investigation or under arrest is on probation, community control, parole, conditional release, or control release.

(2)(b) If the law enforcement agency finds that the person under investigation or under arrest is on probation, community control, parole, conditional release, or control release, the law enforcement agency shall immediately notify the person's probation officer or release supervisor of the investigation or the arrest.

Section 29. Subsections (1) and (7) of section 948.09, Florida Statutes, are amended to read:

948.09 Payment for cost of supervision and rehabilitation.—

(1)(a)1. Any person ordered by the court, the Department of Corrections, or the parole commission to be placed on probation, drug offender probation, community control, parole, control release, provisional release supervision, addiction-recovery supervision, or conditional release supervision under chapter 944, chapter 945, chapter 947, chapter 948, or chapter 958, or in a pretrial intervention program, must, as a condition of any placement, pay the department a total sum of money equal to the total month or portion of a month of supervision times the court-ordered amount, but not to exceed the actual per diem cost of the supervision. The department shall adopt rules by which an offender who pays in full and in advance of regular termination of supervision may receive a reduction in the amount due. The rules shall incorporate provisions by which the offender's ability to pay is linked to an established written payment plan. Funds collected from felony offenders may be used to offset costs of the Department of Corrections associated with community supervision programs, subject to appropriation by the Legislature.

2. In addition to any other contribution or surcharge imposed by this section, each felony offender assessed under this paragraph shall pay a \$2-per-month surcharge to the department. The surcharge shall be deemed to be paid only after the full amount of any monthly payment required by the established written payment plan has been collected by the department. These funds shall be used by the department to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and attendant equipment necessary to train and equip officers who choose to carry a concealed firearm while on duty. Nothing in this subparagraph shall be construed to limit the department's authority to determine who shall be authorized to carry a concealed firearm while on duty, or to limit the right of a correctional probation officer to carry a personal firearm approved by the department.

(b) Any person placed on misdemeanor probation by a county court must contribute not less than \$40 per month, as decided by the sentencing court, to the court-approved public or private entity providing misdemeanor supervision.

(7) The department shall establish a payment plan for all costs ordered by the courts for collection by the department and a priority order for payments, except that victim restitution payments authorized under s. 948.03(5) ~~s. 948.03(1)(e)~~ take precedence over all other court-ordered payments. The department is not required to disburse cumulative amounts of less than \$10 to individual payees established on this payment plan.

Section 30. Subsection (7) of section 948.10, Florida Statutes, is amended to read:

948.10 Community control programs.—

(7) If an offender is sentenced to community control by the court and the offender is ineligible to be placed on community control as provided in s. 948.10(2) ~~s. 948.01(10)~~, the department shall:

(a) Review and verify whether an ineligible offender was placed on community control.

(b) Within 30 days after receipt of the order, notify the sentencing judge, the state attorney, and the Attorney General that the offender was ineligible for placement on community control.

(c) Provide a quarterly report to the chief judge and the state attorney of each circuit citing the number of ineligible offenders placed on community control within that circuit.

(d) Provide an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court on the placement of ineligible offenders on community control in order to assist in preparing judicial education programs or for any other purpose.

Section 31. Subsection (1) of section 948.04, Florida Statutes, is amended to read:

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

(1) Defendants found guilty of felonies who are placed on probation shall be under supervision not to exceed 2 years unless otherwise specified by the court. No defendant placed on probation pursuant to s. 948.012(1) ~~s. 948.01(6)~~ or s. 948.034 is subject to the probation limitations of this subsection. A defendant who is placed on probation or community control for a violation of chapter 794 or chapter 827 is subject to the maximum level of supervision provided by the supervising agency, and that supervision shall continue through the full term of the court-imposed probation or community control.

Section 32. Paragraph (c) of subsection (17) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(17)

(c) “Employment” does not include service performed by or as:

1. Domestic servants in private homes.

2. Agricultural labor performed on a farm in the employ of a bona fide farmer, or association of farmers, that employs 5 or fewer regular employees and that employs fewer than 12 other employees at one time for seasonal agricultural labor that is completed in less than 30 days, provided such seasonal employment does not exceed 45 days in the same calendar year.

The term “farm” includes stock, dairy, poultry, fruit, fur-bearing animals, fish, and truck farms, ranches, nurseries, and orchards. The term “agricultural labor” includes field foremen, timekeepers, checkers, and other farm labor supervisory personnel.

3. Professional athletes, such as professional boxers, wrestlers, baseball, football, basketball, hockey, polo, tennis, jai alai, and similar players, and motorsports teams competing in a motor racing event as defined in s. 549.08.

4. Labor under a sentence of a court to perform community services as provided in s. 316.193.

5. State prisoners or county inmates, except those performing services for private employers or those enumerated in ~~s. 948.036(1) s. 948.03(8)(a)~~.

Section 33. Paragraph (b) of subsection (3) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act; definitions; legislative findings, purpose, and intent; criteria; designation; registration; community and public notification; immunity; penalties.—

(3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.—

(b) The high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with low caseloads, as described in ss. 947.1405(7) and ~~948.30~~ 948.03(5). The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.

3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.

4. Providing for community and public notification concerning the presence of sexual predators.

5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

Section 34. Paragraph (b) of subsection (2) of section 812.0155, Florida Statutes, is amended to read:

812.0155 Suspension of driver’s license following an adjudication of guilt for theft.—

(2) The court may revoke, suspend, or withhold issuance of a driver's license of a person less than 18 years of age who violates s. 812.014 or s. 812.015 as an alternative to sentencing the person to:

(b) Probation as defined in s. 985.03, commitment to the Department of Juvenile Justice, probation as defined in chapter 948 s. 948.01, community control, or incarceration, if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

Section 35. Section 921.0017, Florida Statutes, is amended to read:

921.0017 Credit upon recommitment of offender serving split sentence.—Effective for offenses committed on or after January 1, 1994, if an offender's probation or community control is revoked and the offender is serving a split sentence pursuant to s. 948.012 s. 948.01, upon recommitment to the Department of Corrections, the court shall order credit for time served in state prison or county jail only, without considering any type of gain-time earned before release to supervision, or any type of sentence reduction granted to avoid prison overcrowding, including, but not limited to, any sentence reduction resulting from administrative gain-time, provisional credits, or control release. The court shall determine the amount of jail-time credit to be awarded for time served between the date of arrest as a violator and the date of recommitment, and shall direct the Department of Corrections to compute and apply credit for all other time served previously on the prior sentence for the offense for which the offender is being recommitted. This section does not affect or limit the department's authority to forfeit gain-time under ss. 944.28(1) and 948.06(7).

Section 36. Paragraph (a) of subsection (1) of section 921.187, Florida Statutes, is amended to read:

921.187 Disposition and sentencing; alternatives; restitution.—

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

(a) If the offender does not receive a state prison sentence, the court may:

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

2. Make any other disposition that is authorized by law.

3. Place the offender on probation with or without an adjudication of guilt pursuant to s. 948.01.

4. Impose a fine and probation pursuant to s. 948.011 when the offense is punishable by both a fine and imprisonment and probation is authorized.

5. Place the offender into community control requiring intensive supervision and surveillance pursuant to chapter 948.

6. Impose, as a condition of probation or community control, a period of treatment which shall be restricted to a county facility, a Department of Corrections probation and restitution center, a probation program drug punishment treatment community, or a community residential or nonresidential facility, excluding a community correctional center as defined in s. 944.026, which is owned and operated by any qualified public or private entity providing such services. Before admission to such a facility, the court shall obtain an individual assessment and recommendations on the appropriate treatment needs, which shall be considered by the court in ordering such placements. Placement in such a facility, except for a county residential probation facility, may not exceed 364 days. Placement in a county residential probation facility may not exceed 3 years. Early termination of placement may be recommended to the court, when appropriate, by the center supervisor, the supervising probation officer, or the probation program manager.

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

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

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

10. Require the offender to perform a specified public service pursuant to s. 775.091.

11. Require the offender who violates chapter 893 or violates any law while under the influence of a controlled substance or alcohol to participate in a substance abuse program.

12.a. Require the offender who violates any criminal provision of chapter 893 to pay an additional assessment in an amount up to the amount of any fine imposed, pursuant to ss. 938.21 and 938.23.

b. Require the offender who violates any provision of s. 893.13 to pay an additional assessment in an amount of \$100, pursuant to ss. 938.25 and 943.361.

13. Impose a split sentence whereby the offender is to be placed in a county jail or county work camp upon the completion of any specified term of community supervision.

14. Impose split probation whereby upon satisfactory completion of half the term of probation, the Department of Corrections may place the offender on administrative probation pursuant to s. 948.013 ~~s. 948.01~~ for the remainder of the term of supervision.

15. Require residence in a state probation and restitution center or private drug treatment program for offenders on community control or offenders who have violated conditions of probation.

16. Impose any other sanction which is provided within the community and approved as an intermediate sanction by the county public safety coordinating council as described in s. 951.26.

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

Section 37. Subsection (6) of section 947.23, Florida Statutes, is amended to read:

947.23 Action of commission upon arrest of parolee.—

(6) Within a reasonable time after the hearing, the commissioner, commissioners, or duly authorized representative of the commission who conducted the hearing shall make findings of fact in regard to the alleged parole violation.

(a) If the hearing was conducted by three or more commissioners, a majority of them shall enter an order determining whether the charges of parole violation have been sustained, based on the findings of fact made by them. By such order they shall revoke the parole and return the parolee to prison to serve the sentence theretofore imposed upon her or him, reinstate the original order of parole, order the placement of the parolee into a community control program as set forth in s. 948.101 ~~s. 948.03~~, or enter such other order as is proper.

(b) If the hearing was conducted by one or two commissioners or a duly authorized representative of the commission, at least two commissioners shall enter an order determining whether or not the charges of parole violation have been sustained, based on the findings of fact made by the commissioner, commissioners, or duly authorized representative of the commission. The commissioners, by such order, shall revoke the parole and return the parolee to prison to serve the sentence theretofore imposed upon her or him, reinstate the original order of parole, order the placement of the parolee into a community control program as set forth in s. 948.101 ~~s. 948.03~~, or enter such other order as is proper.

(c) If the disposition after the revocation hearing is to place the parolee into a community control program, the commission shall be guided by the procedures and requirements provided in chapter 948 which apply to the courts regarding the development and implementation of community control.

However, any decision to revoke parole shall be based on a violation of a term or condition specifically enumerated in the parole release order. In a case in which parole is revoked, the majority of the commission or the two commissioners shall make a written statement of the evidence relied on and the reasons for revoking parole.

Section 38. Section 958.14, Florida Statutes, is amended to read:

958.14 Violation of probation or community control program.—A violation or alleged violation of probation or the terms of a community control program shall subject the youthful offender to the provisions of s. 948.06 ~~s. 948.06(1)~~. However, no youthful offender shall be committed to the custody of the department for a substantive violation for a period longer than the maximum sentence for the offense for which he or she was found guilty, with credit for time served while incarcerated, or for a technical or nonsubstantive violation for a period longer than 6 years or for a period longer than the maximum sentence for the offense for which he or she was found guilty, whichever is less, with credit for time served while incarcerated.

Section 39. For the purpose of incorporating the amendment to section 948.09, Florida Statutes, in references thereto, paragraph (b) of subsection (2) and paragraph (b) of subsection (7) of section 944.4731, Florida Statutes, are reenacted to read:

944.4731 Addiction-Recovery Supervision Program.—

(2)

(b) An offender released under addiction-recovery supervision shall be subject to specified terms and conditions, including payment of the costs of supervision under s. 948.09 and any other court-ordered payments, such as child support and restitution. If an offender has received a term of probation or community control to be served after release from incarceration, the period of probation or community control may not be substituted for addiction-recovery supervision and shall follow the term of addiction-recovery supervision. A panel of not fewer than two parole commissioners shall establish the terms and conditions of supervision, and the terms and conditions must be included in the supervision order. In setting the terms and conditions of supervision, the parole commission shall weigh heavily the program requirements, including, but not limited to, work at paid employment while participating in treatment and traveling restrictions. The commission shall also determine whether an offender violates the terms and conditions of supervision and whether a violation warrants revocation of addiction-recovery supervision pursuant to s. 947.141. The parole commission shall review the offender's record for the purpose of establishing the terms and conditions of supervision. The parole commission may impose any special conditions it considers warranted from its review of the record. The length of supervision may not exceed the maximum penalty imposed by the court.

(7) While participating in a substance abuse transition housing program, an offender shall:

(b) Pay fees to defray program costs, costs of supervision required under s. 948.09, and any restitution or obligations for child support.

Section 40. For the purpose of incorporating the amendment to section 948.09, Florida Statutes, in a reference thereto, subsection (8) of section 948.01, Florida Statutes, is reenacted to read:

948.01 When court may place defendant on probation or into community control.—

(8) When the court, under any of the foregoing subsections, places a defendant on probation or into community control, it may specify that the defendant serve all or part of the probationary or community control period in a community residential or nonresidential facility under the jurisdiction of the Department of Corrections or the Department of Children and Family Services or any public or private entity providing such services, and it shall require the payment prescribed in s. 948.09.

Section 41. For the purpose of incorporating the amendment to section 948.09, Florida Statutes, in a reference thereto, subsection (5) of section 948.06, Florida Statutes, is reenacted to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(5) In any hearing in which the failure of a probationer or offender in community control to pay restitution or the cost of supervision as provided in s. 948.09, as directed, is established by the state, if the probationer or offender asserts his or her inability to pay restitution or the cost of supervision, it is incumbent upon the probationer or offender to prove by clear and convincing evidence that he or she does not have the present resources available to pay restitution or the cost of supervision despite sufficient bona fide efforts legally to acquire the resources to do so. If the probationer or offender cannot pay restitution or the cost of supervision despite sufficient bona fide efforts, the court shall consider alternate measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the state's interests in punishment and deterrence may the court imprison a probationer or offender in community control who has demonstrated sufficient bona fide efforts to pay restitution or the cost of supervision.

Section 42. For the purpose of incorporating the amendment to section 948.10, Florida Statutes, in a reference thereto, section 947.1747, Florida Statutes, is reenacted to read:

947.1747 Community control as a special condition of parole.—Upon the establishment of an effective parole release date as provided for in ss. 947.1745 and 947.1746, the commission may, as a special condition of parole, require an inmate to be placed in the community control program of the Department of Corrections as described in s. 948.10 for a period not exceeding 6 months. In every case in which the commission decides to place an inmate on community control as a special condition of parole, the commission shall provide a written explanation of the reasons for its decision.

Section 43. This act shall take effect July 1, 2004.

Approved by the Governor June 24, 2004.

Filed in Office Secretary of State June 24, 2004.