

Committee Substitute for
Committee Substitute for Senate Bill No. 146

An act relating to violent felony offenders; providing a short title; creating s. 903.0351, F.S.; prohibiting bail or other pretrial release for specified violent felony offenders of special concern and certain arrested persons pending a probation-violation hearing or community-control-violation hearing; providing exceptions; amending s. 948.06, F.S.; providing definitions; providing that certain alleged violations of probation or community control by violent felony offenders of special concern and certain arrested persons require a hearing and require the alleged offenders to remain in custody pending hearing; requiring findings by the court and a decision on revocation of probation or community control; creating s. 948.064, F.S.; providing for notification to the criminal justice system of an offender's status as a violent felony offender of special concern or other specified offender; amending s. 921.0024, F.S.; revising the worksheet computations of the Criminal Punishment Code to provide additional community sanction violation points for certain community sanction violations committed by violent felony offenders of special concern; reenacting ss. 948.012(2)(b), 948.10(9), and 958.14, F.S., relating to split sentence of probation or community control and imprisonment, community control programs, and violation of probation or community control, respectively, to incorporate the amendment to s. 948.06, F.S., in references thereto; requiring a report on implementation of this act; providing appropriations and authorizing an additional full-time equivalent position; providing for severability; providing an effective date.

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

Section 1. This act may be cited as the "Anti-Murder Act."

Section 2. Section 903.0351, Florida Statutes, is created to read:

903.0351 Restrictions on pretrial release pending probation-violation hearing or community-control-violation hearing.—

(1) In the instance of an alleged violation of felony probation or community control, bail or any other form of pretrial release shall not be granted prior to the resolution of the probation-violation hearing or the community-control-violation hearing to:

(a) A violent felony offender of special concern as defined in s. 948.06;

(b) A person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense as defined in s. 948.06(8)(c); or

(c) A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as

defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in s. 948.06(8)(c) on or after the effective date of this act.

(2) Subsection (1) shall not apply where the alleged violation of felony probation or community control is based solely on the probationer or offender's failure to pay costs or fines or make restitution payments.

Section 3. Subsection (4) of section 948.06, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

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

(4) Notwithstanding any other provision of this section, a felony probationer or an offender in community control who is arrested for violating his or her probation or community control in a material respect may be taken before the court in the county or circuit in which the probationer or offender was arrested. That court shall advise him or her of the ~~such~~ charge of a violation and, if such charge is admitted, shall cause him or her to be brought before the court that ~~which~~ granted the probation or community control. If the ~~such~~ violation 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. However, if the probationer or offender is under supervision for any criminal offense proscribed in chapter 794, s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a registered sexual predator or a registered sexual offender, or is under supervision for a criminal offense for which he or she would meet the registration criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the effective date of those sections, the court must make a finding that the probationer or offender is not a danger to the public prior to release with or without bail. In determining the danger posed by the offender's or probationer's release, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender's or probationer's past and present conduct, including convictions of crimes; any record of arrests without conviction for crimes involving violence or sexual crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the offender or probationer; the offender's or probationer's family ties, length of residence in the community, employment history, and mental condition; his or her history and conduct during the probation or community control supervision from which the violation arises and any other previous supervisions, including disciplinary records of previous incarcerations; the likelihood that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant. The court, as soon as is practicable, shall give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel. After the ~~such~~ hearing, the court shall make findings of fact and forward the findings to the court that ~~which~~ granted the probation or community control and to the probationer or offender or his or her attorney. The findings of fact by the hearing court are binding on the court that ~~which~~ granted the probation or community control. Upon the probationer or offender being brought

before it, the court ~~that which~~ granted the probation or community control may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in this section. However, the probationer or offender shall not be released and shall not be admitted to bail, but shall be brought before the court that granted the probation or community control if any violation of felony probation or community control other than a failure to pay costs or fines or make restitution payments is alleged to have been committed by:

(a) A violent felony offender of special concern, as defined in this section;

(b) A person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense as defined in this section; or

(c) A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in this section on or after the effective date of this act.

(8)(a) In addition to complying with the provisions of subsections (1)-(7), this subsection provides further requirements regarding a probationer or offender in community control who is a violent felony offender of special concern. The provisions of this subsection shall control over any conflicting provisions in subsections (1)-(7). For purposes of this subsection, the term "convicted" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(b) For purposes of this section and ss. 903.0351, 948.064, and 921.0024, the term "violent felony offender of special concern" means a person who is on:

1. Felony probation or community control related to the commission of a qualifying offense committed on or after the effective date of this act;

2. Felony probation or community control for any offense committed on or after the effective date of this act, and has previously been convicted of a qualifying offense;

3. Felony probation or community control for any offense committed on or after the effective date of this act, and is found to have violated that probation or community control by committing a qualifying offense;

4. Felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b) and has committed a qualifying offense on or after the effective date of this act;

5. Felony probation or community control and has previously been found by a court to be a three-time violent felony offender as defined in s.

775.084(1)(c) and has committed a qualifying offense on or after the effective date of this act; or

6. Felony probation or community control and has previously been found by a court to be a sexual predator under s. 775.21 and has committed a qualifying offense on or after the effective date of this act.

(c) For purposes of this section, the term “qualifying offense” means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025(2)(b) or (c).

2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.

3. Aggravated battery or attempted aggravated battery under s. 784.045.

4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c).

5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious conduct under s. 800.04(6)(b), or lewd or lascivious exhibition under s. 800.04(7)(c).

6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.

8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.

9. Computer pornography under s. 847.0135(2) or (3), transmission of child pornography under s. 847.0137, or selling or buying of minors under s. 847.0145.

10. Poisoning food or water under s. 859.01.

11. Abuse of a dead human body under s. 872.06.

12. Any burglary offense or attempted burglary offense that is either a first-degree felony or second-degree felony under s. 810.02(2) or (3).

13. Arson or attempted arson under s. 806.01(1).

14. Aggravated assault under s. 784.021.

15. Aggravated stalking under s. 784.048(3), (4), (5), or (7).

16. Aircraft piracy under s. 860.16.

17. Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4).

18. Treason under s. 876.32.

19. Any offense committed in another jurisdiction which would be an offense listed in this paragraph if that offense had been committed in this state.

(d) In the case of an alleged violation of probation or community control other than a failure to pay costs, fines, or restitution, the following individuals shall remain in custody pending the resolution of the probation or community control violation:

1. A violent felony offender of special concern, as defined in this section;

2. A person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense as defined in this section; or

3. A person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense as defined in this section on or after the effective date of this act.

The court shall not dismiss the probation or community control violation warrant pending against an offender enumerated in this paragraph without holding a recorded violation-of-probation hearing at which both the state and the offender are represented.

(e) If the court, after conducting the hearing required by paragraph (d), determines that a violent felony offender of special concern has committed a violation of probation or community control other than a failure to pay costs, fines, or restitution, the court shall:

1. Make written findings as to whether or not the violent felony offender of special concern poses a danger to the community. In determining the danger to the community posed by the offender's release, the court shall base its findings on one or more of the following:

a. The nature and circumstances of the violation and any new offenses charged.

b. The offender's present conduct, including criminal convictions.

c. The offender's amenability to nonincarcerative sanctions based on his or her history and conduct during the probation or community control supervision from which the violation hearing arises and any other previous supervisions, including disciplinary records of previous incarcerations.

- d. The weight of the evidence against the offender.
 - e. Any other facts the court considers relevant.
2. Decide whether to revoke the probation or community control.
 - a. If the court has found that a violent felony offender of special concern poses a danger to the community, the court shall revoke probation and shall sentence the offender up to the statutory maximum, or longer if permitted by law.
 - b. If the court has found that a violent felony offender of special concern does not pose a danger to the community, the court may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in this section.

Section 4. Section 948.064, Florida Statutes, is created to read:

948.064 Notification of status as a violent felony offender of special concern.—

(1) To facilitate the information available to the court at first appearance hearings and at all subsequent hearings for “violent felony offenders of special concern,” as defined in s. 948.06, the Department of Corrections shall, no later than October 1, 2007, develop a system for identifying the offenders in the department’s database and post on the Department of Law Enforcement’s Criminal Justice Intranet a listing of all “violent felony offenders of special concern” who are under community supervision.

(2) The county where the arrested person is booked shall provide the following information to the court at the time of the first appearance:

(a) State and national criminal history information;

(b) All criminal justice information available in the Florida Crime Information Center and the National Crime Information Center; and

(c) Notice that the arrested person meets the requirement for restrictions on pretrial release pending the probation-violation hearing or community-control-violation hearing in s. 903.0351(1)(b).

(3) The courts shall assist the department’s dissemination of critical information by creating and maintaining an automated system to provide the information as specified in this section to the court with the jurisdiction to conduct the hearings.

(4) The state attorney, or the statewide prosecutor if applicable, shall advise the court at each critical stage in the judicial process, at which the state attorney or statewide prosecutor is represented, whether an alleged or convicted offender is a violent felony offender of special concern; a person who is on felony probation or community control for any offense committed on or after the effective date of this act and who is arrested for a qualifying offense; or a person who is on felony probation or community control and has previously been found by a court to be a habitual violent felony offender as

defined in s. 775.084(1)(b), a three-time violent felony offender as defined in s. 775.084(1)(c), or a sexual predator under s. 775.21, and who is arrested for committing a qualifying offense on or after the effective date of this act.

Section 5. Paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; score-sheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation, and each successive community sanction violation, unless any of the following apply; ~~however,~~

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the such violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:

(I) The violation does not include a new felony conviction; and

(II) The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or make restitution payments.

b. Twenty-four (24) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new felony conviction.

Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of thirty (30) ~~30~~ points shall be added.

For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional eighteen (18) ~~18~~ sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional twenty-five (25) ~~25~~ sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(9) or (10), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal street gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang as prohibited under s. 874.04, the subtotal sentence points are multiplied by 1.5.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Section 6. For the purpose of incorporating the amendment made by this act to section 948.06, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 948.012, Florida Statutes, is reenacted to read:

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

(2) 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:

(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 7. For the purpose of incorporating the amendment made by this act to section 948.06, Florida Statutes, in a reference thereto, subsection (9) of section 948.10, Florida Statutes, is reenacted 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 8. For the purpose of incorporating the amendment made by this act to section 948.06, Florida Statutes, in a reference thereto, section 958.14, Florida Statutes, is reenacted 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. 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 9. (1) The Department of Corrections shall coordinate preparation of a report on implementation of the Anti-Murder Act and shall submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 1, 2008.

(2) The department shall convene the participation of, and coordinate preparation of the report with, representatives of:

(a) The Office of the State Courts Administrator on behalf of the state courts system;

(b) The Florida Prosecuting Attorneys Association;

(c) The Florida Public Defender Association;

(d) The Florida Association of Criminal Defense Lawyers; and

(e) Any other units of government, organizations, or entities which the department considers necessary.

(3) At a minimum, the report must identify any legal, fiscal, or administrative impediments to full implementation of this act and recommend any legislative action related to implementation of this act.

Section 10. The sums of \$39,906 in recurring funds and \$221,526 in nonrecurring funds are appropriated from the General Revenue Fund to the Office of State Courts Administrator for the 2006-2007 fiscal year for the purpose of implementing the provisions of this act, and one full-time equivalent position and associated rate of 53,093 are authorized. The sum of \$46,330 in recurring funds is appropriated from the General Revenue Fund to the Office of State Courts Administrator for the 2007-2008 fiscal year.

Section 11. The sum of \$158,756 in recurring funds is appropriated from the General Revenue Fund to the Department of Corrections for operating costs for the 2006-2007 fiscal year. The sum of \$316,180 in recurring funds is appropriated from the General Revenue Fund to the Department of Corrections for operating costs for the 2007-2008 fiscal year.

Section 12. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 13. This act shall take effect upon becoming a law.

Approved by the Governor March 12, 2007.

Filed in Office Secretary of State March 12, 2007.