

## CHAPTER 2010-113

### House Bill No. 7035

An act relating to criminal justice; repealing s. 16.07, F.S., relating to a prohibition on the Attorney General collecting any fee for defending any supposed offender; repealing s. 30.11, F.S., relating to a sheriff's or deputy's required place of residence; amending ss. 384.34 and 796.08, F.S.; removing references to conform to changes made by the act; amending s. 775.0877, F.S.; removing penalty provisions relating to criminal transmission of HIV; amending s. 893.13, F.S.; removing penalty provisions relating to obsolete community residential drug punishment centers; amending s. 921.187, F.S.; removing sentencing provisions relating to community residential drug punishment centers and quarantine of offenders convicted of criminal transmission of HIV; repealing s. 944.293, F.S., relating to initiation of restoration of civil rights; amending s. 948.001, F.S.; removing the definition of the term "criminal quarantine community control"; repealing s. 948.034, F.S., relating to community residential drug punishment centers; repealing s. 948.0345, F.S., relating to community service alternative to fines; amending s. 984.04, F.S.; removing a reference to conform to changes made by the act; amending ss. 948.101 and 948.11, F.S.; removing references to criminal quarantine community control; repealing s. 957.125, F.S., relating to authorization for the Correctional Privatization Commission to contract for youthful offender correctional facilities; repealing s. 985.4891, F.S., relating to sheriff's training and respect programs; amending ss. 958.046, 985.445, 985.47, 985.483, 985.494, and 985.645, F.S.; conforming provisions to the repeal of s. 985.4891, F.S.; providing an effective date.

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

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 Section 16.07, Florida Statutes, is repealed.

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 Section 30.11, Florida Statutes, is repealed.

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

384.34 Penalties.—

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

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

775.0877 Criminal transmission of HIV; procedures; penalties.—

(3) An offender who has undergone HIV testing pursuant to subsection (1), and to whom positive test results have been disclosed pursuant to subsection (2), who commits a second or subsequent offense enumerated in paragraphs (1)(a)-(n), commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 ~~subsection (7)~~. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime enumerated in paragraphs (1)(a)-(n).

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

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

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

(5) A person who:

(a) Commits or offers to commit prostitution; or

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

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

893.13 Prohibited acts; penalties.—

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

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

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

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

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

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

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

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

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

Section 7. 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:

(a)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.

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

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

(d)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.

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

(f)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.

(g)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.

(h)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.

(i)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.

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

(k)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.

~~(l)1.12.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.

2.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.

~~(m)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.

(n)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 for the remainder of the term of supervision.

(o)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.

(p)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.

(q)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.

~~(b)1.— Notwithstanding any provision of former s. 921.001 or s. 921.002 to the contrary, on or after October 1, 1993, the court may require any defendant who violates s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), and meets the criteria described in s. 893.13(10), to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(1), in lieu of serving a term of imprisonment.~~

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

~~(2)— In addition to any other penalty provided by law for an offense enumerated in s. 775.0877(1)(a)-(n), if the offender is convicted of criminal transmission of HIV pursuant to s. 775.0877, the court may sentence the~~

~~offender to criminal quarantine community control as described in s. 948.001.~~

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

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

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

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

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

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

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

Section 12. 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) ~~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 13. Section 948.101, Florida Statutes, is 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.

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

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

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

~~(c)3.~~ Mandatory public service.

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

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

~~(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, s. 847.0135(5), 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.

~~(3) 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 14. Subsection (1) of section 948.11, Florida Statutes, is amended to read:

948.11 Electronic monitoring devices.—

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

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

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

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

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

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

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

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

(1) Upon a first adjudication for a grand theft of a motor vehicle, may place the child in a sheriff's training and respect program, ~~unless the child is ineligible under s. 985.4891~~, and shall order the child to complete a minimum of 50 hours of community service.

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

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

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

985.47 Serious or habitual juvenile offender.—

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

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

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

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

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

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

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

985.494 Commitment programs for juvenile felony offenders.—

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

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

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

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

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

985.645 Protective action response.—

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

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

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

Approved by the Governor May 26, 2010.

Filed in Office Secretary of State May 26, 2010.