

By Senator Campbell

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1 A bill to be entitled
2 An act relating to criminal justice; repealing s.
3 843.085, F.S.; deleting a prohibition against wearing
4 or displaying certain badges or indicia of authority
5 of certain federal, state, county, or municipal
6 agencies without authorization; deleting a prohibition
7 against owning or operating a motor vehicle marked or
8 identified with certain indicia of a criminal justice
9 agency; deleting a prohibition against selling,
10 transferring, or giving away an authorized badge of a
11 criminal justice agency; deleting an exception;
12 deleting a penalty; repealing s. 918.19, F.S.;
13 deleting a requirement that the prosecuting attorney
14 open the closing arguments after the closing of
15 evidence in a criminal prosecution; deleting a
16 provision authorizing the accused or the accused's
17 attorney to reply; deleting a provision authorizing
18 the prosecuting attorney to reply in rebuttal;
19 deleting a provision requiring such criminal
20 procedures method to control under certain
21 circumstances; repealing s. 922.095, F.S.; deleting a
22 requirement that a person convicted and sentenced to
23 death pursue all possible collateral remedies in state
24 court in accordance with specified rules; repealing s.
25 922.108, F.S.; deleting prohibitions against
26 specifying a particular method of execution in a
27 sentence of death and against reversing any sentence
28 over the wording or form of the sentencing order;
29 repealing s. 924.051, F.S.; deleting definitions of

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30 terms; deleting requirements that the terms and
31 conditions of direct appeals and collateral review in
32 criminal cases be strictly enforced; deleting
33 provisions relating to legislative intent; amending s.
34 925.12, F.S.; deleting provisions specifying that the
35 Legislature intends that the Supreme Court adopt
36 certain rules of procedure; deleting a provision
37 relating to legislative intent; amending s. 948.01,
38 F.S.; deleting a requirement that the Department of
39 Corrections, in consultation with the Office of the
40 State Courts Administrator, revise and make available
41 uniform order of supervision forms annually or as
42 necessary for the courts to use for persons placed on
43 community supervision; amending s. 948.06, F.S.;
44 deleting a provision authorizing a court to impose a
45 sanction with a term of a certain duration upon the
46 revocation or modification of probation or community
47 control; amending s. 948.09, F.S.; deleting provisions
48 authorizing the department, at its discretion, to
49 require offenders under any form of supervision to
50 submit to and pay for urinalysis testing; deleting a
51 provision that makes a failure to make such payment
52 grounds for revocation of supervision or removal from
53 a pretrial intervention program; deleting an exemption
54 to the payment requirement; deleting a requirement
55 that the department establish a payment plan for all
56 costs ordered by a court for collection by the
57 department and a priority order for victim restitution
58 payments over all other court-ordered payments;

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59 deleting a provision authorizing the department not to
60 disburse cumulative amounts of less than a specified
61 value to certain payees; amending s. 985.534, F.S.;
62 conforming a cross-reference to changes made by the
63 act; reenacting ss. 948.012(2)(b), 948.10(3),
64 948.20(3), and 958.14, F.S., relating to split
65 sentences of probation or community control and
66 imprisonment, community control programs and home
67 confinement, drug offender probation, and violation of
68 probation or community control programs, respectively,
69 to incorporate the amendment made to s. 948.06, F.S.,
70 in references thereto; reenacting ss. 944.4731(2)(b)
71 and (7)(b), 947.1405(2), 948.01(6), and 948.06(5),
72 F.S., relating to the Addiction-Recovery Supervision
73 Program, a conditional release program, when a court
74 may place a defendant on probation or into community
75 control, and failure to pay restitution or costs of
76 supervision, respectively, to incorporate the
77 amendment made to s. 948.09, F.S., in references
78 thereto; providing an effective date.

79
80 Be It Enacted by the Legislature of the State of Florida:

81
82 Section 1. Section 843.085, Florida Statutes, is repealed.
83 Section 2. Section 918.19, Florida Statutes, is repealed.
84 Section 3. Section 922.095, Florida Statutes, is repealed.
85 Section 4. Section 922.108, Florida Statutes, is repealed.
86 Section 5. Section 924.051, Florida Statutes, is repealed.
87 Section 6. Subsections (3) and (4) of section 925.12,

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88 Florida Statutes, are amended to read:

89 925.12 DNA testing; defendants entering pleas.—

90 ~~(3) It is the intent of the Legislature that the Supreme~~
91 ~~Court adopt rules of procedure consistent with this section for~~
92 ~~a court, prior to the acceptance of a plea, to make an inquiry~~
93 ~~into the following matters:~~

94 ~~(a) Whether counsel for the defense has reviewed the~~
95 ~~discovery disclosed by the state and whether such discovery~~
96 ~~included a listing or description of physical items of evidence.~~

97 ~~(b) Whether the nature of the evidence against the~~
98 ~~defendant disclosed through discovery has been reviewed with the~~
99 ~~defendant.~~

100 ~~(c) Whether the defendant or counsel for the defendant is~~
101 ~~aware of any physical evidence disclosed by the state for which~~
102 ~~DNA testing may exonerate the defendant.~~

103 ~~(d) Whether the state is aware of any physical evidence for~~
104 ~~which DNA testing may exonerate the defendant.~~

105 ~~(4) It is the intent of the Legislature that the~~
106 ~~postponement of the proceedings by the court on the defendant's~~
107 ~~behalf under subsection (2) constitute an extension attributable~~
108 ~~to the defendant for purposes of the defendant's right to a~~
109 ~~speedy trial.~~

110 Section 7. Subsection (1) of section 948.01, Florida
111 Statutes, is amended to read:

112 948.01 When court may place defendant on probation or into
113 community control.—

114 (1) Any state court having original jurisdiction of
115 criminal actions may at a time to be determined by the court,
116 with or without an adjudication of the guilt of the defendant,

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117 hear and determine the question of the probation of a defendant
118 in a criminal case, except for an offense punishable by death,
119 who has been found guilty by the verdict of a jury, has entered
120 a plea of guilty or a plea of nolo contendere, or has been found
121 guilty by the court trying the case without a jury.

122 ~~(a)~~ If the court places the defendant on probation or into
123 community control for a felony, the department shall provide
124 immediate supervision by an officer employed in compliance with
125 the minimum qualifications for officers as provided in s.
126 943.13. A private entity may not provide probationary or
127 supervision services to felony or misdemeanor offenders
128 sentenced or placed on probation or other supervision by the
129 circuit court.

130 ~~(b) The department, in consultation with the Office of the~~
131 ~~State Courts Administrator, shall revise and make available to~~
132 ~~the courts uniform order of supervision forms by July 1 of each~~
133 ~~year or as necessary. The courts shall use the uniform order of~~
134 ~~supervision forms provided by the department for all persons~~
135 ~~placed on community supervision.~~

136 Section 8. Paragraph (f) of subsection (2) of section
137 948.06, Florida Statutes, is amended to read:

138 948.06 Violation of probation or community control;
139 revocation; modification; continuance; failure to pay
140 restitution or cost of supervision.—

141 (2)

142 ~~(f) Notwithstanding s. 775.082, when a period of probation~~
143 ~~or community control has been tolled, upon revocation or~~
144 ~~modification of the probation or community control, the court~~
145 ~~may impose a sanction with a term that when combined with the~~

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146 ~~amount of supervision served and tolled, exceeds the term~~
147 ~~permissible pursuant to s. 775.082 for a term up to the amount~~
148 ~~of the tolled period of supervision.~~

149 Section 9. Subsections (5) and (6) of section 948.09,
150 Florida Statutes, are amended to read:

151 948.09 Payment for cost of supervision and other monetary
152 obligations.-

153 ~~(5) In addition to any other required contributions, the~~
154 ~~department, at its discretion, may require offenders under any~~
155 ~~form of supervision to submit to and pay for urinalysis testing~~
156 ~~to identify drug usage as part of the rehabilitation program.~~
157 ~~Any failure to make such payment, or participate, may be~~
158 ~~considered a ground for revocation by the court, the Florida~~
159 ~~Commission on Offender Review, or the Control Release Authority,~~
160 ~~or for removal from the pretrial intervention program by the~~
161 ~~state attorney. The department may exempt a person from such~~
162 ~~payment if it determines that any of the factors specified in~~
163 ~~subsection (3) exist.~~

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

171 Section 10. Subsection (1) of section 985.534, Florida
172 Statutes, is amended to read:

173 985.534 Appeal.-

174 (1) An appeal from an order of the court affecting a party

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175 to a case involving a child under this chapter may be taken to
176 the appropriate district court of appeal within the time and in
177 the manner prescribed by ~~s. 924.051~~ and the Florida Rules of
178 Appellate Procedure by:

179 (a) Any child, and any parent or legal guardian or
180 custodian of any child.

181 (b) The state, which may appeal from:

182 1. An order dismissing a petition or any section thereof;

183 2. An order granting a new adjudicatory hearing;

184 3. An order arresting judgment;

185 4. A ruling on a question of law when the child is
186 adjudicated delinquent and appeals from the judgment;

187 5. The disposition, on the ground that it is illegal;

188 6. A judgment discharging a child on habeas corpus;

189 7. An order adjudicating a child insane under the Florida
190 Rules of Juvenile Procedure; and

191 8. All other preadjudicatory hearings, except that the
192 state may not take more than one appeal under this subsection in
193 any case.

194

195 In the case of an appeal by the state, the notice of appeal
196 shall be filed by the appropriate state attorney or his or her
197 authorized assistant under s. 27.18. Such an appeal shall embody
198 all assignments of error in each preadjudicatory hearing order
199 that the state seeks to have reviewed. The state shall pay all
200 costs of the appeal except for the child's attorney's fee.

201 Section 11. For the purpose of incorporating the amendment
202 made by this act to section 948.06, Florida Statutes, in a
203 reference thereto, paragraph (b) of subsection (2) of section

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204 948.012, Florida Statutes, is reenacted to read:

205 948.012 Split sentence of probation or community control
206 and imprisonment.—

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

211 (b) If the offender does not meet the terms and conditions
212 of probation or community control, the court may revoke, modify,
213 or continue the probation or community control as provided in s.
214 948.06. If the probation or community control is revoked, the
215 court may impose any sentence that it could have imposed at the
216 time the offender was placed on probation or community control.
217 The court may not provide credit for time served for any portion
218 of a probation or community control term toward a subsequent
219 term of probation or community control. However, the court may
220 not impose a subsequent term of probation or community control
221 which, when combined with any amount of time served on preceding
222 terms of probation or community control for offenses pending
223 before the court for sentencing, would exceed the maximum
224 penalty allowable as provided in s. 775.082. Such term of
225 incarceration shall be served under applicable law or county
226 ordinance governing service of sentences in state or county
227 jurisdiction. This paragraph does not prohibit any other
228 sanction provided by law.

229 Section 12. For the purpose of incorporating the amendment
230 made by this act to section 948.06, Florida Statutes, in a
231 reference thereto, subsection (3) of section 948.10, Florida
232 Statutes, is reenacted to read:

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233 948.10 Community control programs; home confinement.—

234 (3) Procedures governing violations of community control
235 are the same as those described in s. 948.06 with respect to
236 probation.

237 Section 13. For the purpose of incorporating the amendment
238 made by this act to section 948.06, Florida Statutes, in a
239 reference thereto, subsection (3) of section 948.20, Florida
240 Statutes, is reenacted to read:

241 948.20 Drug offender probation.—

242 (3) Offenders placed on drug offender probation are subject
243 to revocation of probation as provided in s. 948.06.

244 Section 14. For the purpose of incorporating the amendment
245 made by this act to section 948.06, Florida Statutes, in a
246 reference thereto, section 958.14, Florida Statutes, is
247 reenacted to read:

248 958.14 Violation of probation or community control
249 program.—A violation or alleged violation of probation or the
250 terms of a community control program shall subject the youthful
251 offender to the provisions of s. 948.06. However, no youthful
252 offender shall be committed to the custody of the department for
253 a substantive violation for a period longer than the maximum
254 sentence for the offense for which he or she was found guilty,
255 with credit for time served while incarcerated, or for a
256 technical or nonsubstantive violation for a period longer than 6
257 years or for a period longer than the maximum sentence for the
258 offense for which he or she was found guilty, whichever is less,
259 with credit for time served while incarcerated.

260 Section 15. For the purpose of incorporating the amendment
261 made by this act to section 948.09, Florida Statutes, in a

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262 reference thereto, paragraph (b) of subsection (2) and paragraph
263 (b) of subsection (7) of section 944.4731, Florida Statutes, are
264 reenacted to read:

265 944.4731 Addiction-Recovery Supervision Program.—

266 (2)

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

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

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

296 Section 16. For the purpose of incorporating the amendment
297 made by this act to section 948.09, Florida Statutes, in a
298 reference thereto, subsection (2) of section 947.1405, Florida
299 Statutes, is reenacted to read:

300 947.1405 Conditional release program.—

301 (2) Any inmate who:

302 (a) Is convicted of a crime committed on or after October
303 1, 1988, and before January 1, 1994, and any inmate who is
304 convicted of a crime committed on or after January 1, 1994,
305 which crime is or was contained in category 1, category 2,
306 category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida
307 Rules of Criminal Procedure (1993), and who has served at least
308 one prior felony commitment at a state or federal correctional
309 institution;

310 (b) Is sentenced as a habitual or violent habitual offender
311 or a violent career criminal pursuant to s. 775.084; or

312 (c) Is found to be a sexual predator under s. 775.21 or
313 former s. 775.23,

314

315 shall, upon reaching the tentative release date or provisional
316 release date, whichever is earlier, as established by the
317 Department of Corrections, be released under supervision subject
318 to specified terms and conditions, including payment of the cost
319 of supervision pursuant to s. 948.09. Such supervision shall be

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320 applicable to all sentences within the overall term of sentences
321 if an inmate's overall term of sentences includes one or more
322 sentences that are eligible for conditional release supervision
323 as provided herein. Effective July 1, 1994, and applicable for
324 offenses committed on or after that date, the commission may
325 require, as a condition of conditional release, that the
326 releasee make payment of the debt due and owing to a county or
327 municipal detention facility under s. 951.032 for medical care,
328 treatment, hospitalization, or transportation received by the
329 releasee while in that detention facility. The commission, in
330 determining whether to order such repayment and the amount of
331 such repayment, shall consider the amount of the debt, whether
332 there was any fault of the institution for the medical expenses
333 incurred, the financial resources of the releasee, the present
334 and potential future financial needs and earning ability of the
335 releasee, and dependents, and other appropriate factors. If any
336 inmate placed on conditional release supervision is also subject
337 to probation or community control, resulting from a probationary
338 or community control split sentence within the overall term of
339 sentences, the Department of Corrections shall supervise such
340 person according to the conditions imposed by the court and the
341 commission shall defer to such supervision. If the court revokes
342 probation or community control and resentences the offender to a
343 term of incarceration, such revocation also constitutes a
344 sufficient basis for the revocation of the conditional release
345 supervision on any nonprobationary or noncommunity control
346 sentence without further hearing by the commission. If any such
347 supervision on any nonprobationary or noncommunity control
348 sentence is revoked, such revocation may result in a forfeiture

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349 of all gain-time, and the commission may revoke the resulting
350 deferred conditional release supervision or take other action it
351 considers appropriate. If the term of conditional release
352 supervision exceeds that of the probation or community control,
353 then, upon expiration of the probation or community control,
354 authority for the supervision shall revert to the commission and
355 the supervision shall be subject to the conditions imposed by
356 the commission. A panel of no fewer than two commissioners shall
357 establish the terms and conditions of any such release. If the
358 offense was a controlled substance violation, the conditions
359 shall include a requirement that the offender submit to random
360 substance abuse testing intermittently throughout the term of
361 conditional release supervision, upon the direction of the
362 correctional probation officer as defined in s. 943.10(3). The
363 commission shall also determine whether the terms and conditions
364 of such release have been violated and whether such violation
365 warrants revocation of the conditional release.

366 Section 17. For the purpose of incorporating the amendment
367 made by this act to section 948.09, Florida Statutes, in a
368 reference thereto, subsection (6) of section 948.01, Florida
369 Statutes, is reenacted to read:

370 948.01 When court may place defendant on probation or into
371 community control.—

372 (6) When the court, under any of the foregoing subsections,
373 places a defendant on probation or into community control, it
374 may specify that the defendant serve all or part of the
375 probationary or community control period in a community
376 residential or nonresidential facility under the jurisdiction of
377 the Department of Corrections or the Department of Children and

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378 Families or any public or private entity providing such
379 services, and it shall require the payment prescribed in s.
380 948.09.

381 Section 18. For the purpose of incorporating the amendment
382 made by this act to section 948.09, Florida Statutes, in a
383 reference thereto, subsection (5) of section 948.06, Florida
384 Statutes, is reenacted to read:

385 948.06 Violation of probation or community control;
386 revocation; modification; continuance; failure to pay
387 restitution or cost of supervision.—

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

406 Section 19. This act shall take effect upon becoming a law.