SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2212

SPONSOR: Governmental Oversight and Productivity Committee and Criminal Justice Committee

SUBJECT: Corrections

DATE: April 14, 2000 REVISED: 04/18/00

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barrow/Cellon	Cannon	CJ	Fav/1 amendment
2.	White	Wilson	GO	Favorable/CS
3.	Mannelli	Hadi	FP	Fav/1 amendment
4.				
5.				

I. Summary:

The Committee Substitute (CS) contains substantive law changes that were recommended in the Criminal Justice Committee's 1999-2000 interim project report, *The Effectiveness of the Department of Corrections' Community Control Program*, proposals from committee members, and discussions with officials from the Department of Corrections (DOC).

The bill requires the DOC to make information on offenders who are under supervision available to the public and update the information as necessary. The department is also required to provide probation officers with cellular phones and radios, as the department deems appropriate. The bill implements a plan whereby the department shall issue firearms, to those probation officers who are qualified to carry them, by July 1, 2002. The DOC is further required to submit an information technology plan to the Legislature by March 1, 2001.

The payment of restitution to crime victims is prioritized by the bill so that an offender pays it before others costs and fees the offender is ordered to pay. Under the provisions of the bill an offender who is not statutorily eligible for a community control sentence would also be ineligible for a probationary sentence. A list of offenses which disqualify an offender from a community supervision sanction is set forth in the bill. Sentencing options are also limited in violation of community control cases in that where an offender commits a subsequent offense which is statutorily similar to the offense he or she is currently on community control for, an incarcerative sentence must be imposed in the violation case.

The bill expands the list of standard conditions of supervision (those that are not required to be orally pronounced by the sentencing court) to include the offender submitting to the taking of a digitized photograph and remaining "law-abiding" while on supervision. It also specifies that the offender must pay for drug testing unless he or she meets criteria set forth in s. 948.09 (3), F.S., whereby payment may be waived by the department, and that electronic monitoring will be done upon the order of the court, not at the discretion of the department. The bill clarifies the requirement of polygraph examinations for sex offenders by requiring that they be done by

polygraphers who are specifically trained to polygraph sex offenders, and gives the court more discretion in setting the hours and parameters of the mandatory curfew.

The bill clarifies that paying restitution is a condition of community control. It provides that offenders on community control or probation for sexual battery or child abuse are subject to the maximum level of supervision by the department unless otherwise stated by the sentencing court.

Sentencing options in cases where an offender has violated community control and committed a new law violation which is substantially similar to the offense for which he or she is on community control are limited by the bill. The sentence on the violation case must include an incarcerative sanction. The court retains sentencing discretion in cases where the offender is under supervision for Level 1 or Level 2 offenses under the Criminal Punishment Code. The bill requires some sanction be imposed in violation cases unless the statutory maximum sentence has been served.

The bill requires the DOC to maintain the capability of electronic monitoring to maximize public safety and to be as cost effective as possible.

This bill substantially amends the following sections of the Florida Statutes: 775.089, 948.01, 948.03, 948.032, 948.04, 948.06, and 948.11.

II. Present Situation:

Public Information

Dispositions in adult criminal cases are public record unless such information is removed from public access. In cases where criminal information is removed from public access, a person has had his or her record of a criminal conviction expunged or sealed pursuant to ss. 943.0585 or 943.059, F.S. Although it is public record to learn of persons who are sentenced to probation or community control, the burden of obtaining such information is currently on a person who would affirmatively be seeking it. The courts and the DOC do not systematically notify or disseminate information about persons who are sentenced to probation or community control.

Florida's Community Control Program

Florida's Community Control Program was legislatively created in 1983. *See*, Ch. 83-131, ss. 11-21, 1983 *Laws of Fla.* 435, 446-454 (CS/CS/HB 1012 (1983)). Community control is Florida's intensive supervision program for felony offenders. The Community Control Program serves as "house arrest" for offenders who are court-ordered to serve their sentence under this program.

Section 948.01, F.S., delineates the circumstances in which an offender may be sentenced to community control. Courts have some discretion, but must follow the other sentencing laws that exist, such as the habitualizing statutes and the Criminal Punishment Code. If a court imposes a sentence of community control, the maximum length of the community control sentence may not exceed two years. Certain offenders are statutorily prohibited from being sentenced to community control. Section 948.01(10), F.S., states that an offender may not be placed on community control by a court if the offender is (a) convicted of, regardless of adjudication, a forcible felony as

defined in s. 776.08, F.S, and the offender was (b) previously convicted of, regardless of adjudication, a forcible felony as defined in s. 776.08, F.S.

Under s. 776.08, F.S., "forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnaping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. However, s. 948.01(10), F.S., specifically exempts "manslaughter" and "burglary" from the definition of "forcible felony" for purposes of that section. Therefore, offenders who have a prior forcible felony and a current offense of manslaughter or burglary are not statutorily prohibited from receiving a community control sentence if it is otherwise permitted by law. Likewise, an offender who has a prior manslaughter or burglary conviction and has a current forcible felony conviction is also not prohibited from receiving a community control sentence if it is otherwise permitted by law.

This prohibition in law, however, is arguably unclear. There are not statutory cross-references with the offenses named in the forcible felony statute. Case law that could be used for analogy purposes to bring clarity seems to continue the confusion. *State v. Burgos*, 613 So.2d 588, 591 (Fla. 4th DCA 1993), precluded a community control sentence because of a prior "armed" robbery, which is a first degree felony, and a new charge of "strong arm" robbery, which is a second degree felony. In light of this case, it is not clear whether the prohibition against robbery crimes on community control include robbery by sudden snatching.

The case of *White v. State*, 666 So.2d 895 (1996), would suggest that DUI manslaughter would be included in the exception to the definition of forcible felony under s. 948.01(10), F.S. In the *White* case, the court found that the reference to "manslaughter" in the habitual violent felony offender statute included *all* manslaughters *without limitation*, meaning that manslaughter by culpable negligence was a predicate offense, or "manslaughter," for purposes of enhancing the penalties on subsequent offenses. It could be argued that the exception of "manslaughter" under s. 948.01(10), F.S., is all manslaughters as well.

The decisions of *State v. Burgos* and *White v. State*, illustrate that without statutory references questions exist as to the meaning of the statutory prohibition. Without statutory cross-references, the questions are even more prevalent if an offense has additional or different elements that give rise to varying felony degrees.

Is Probation a Sentencing Option When Community Control is Not?

It is unclear whether courts are prohibited from placing an offender on regular probation if they are statutorily prohibited from being placed on community control. If offenders were statutorily authorized to be placed into probation when, from a public policy standpoint, they are prohibited from placement into community control, an anomaly or inconsistency in the law exists. In a concurring opinion in the case of *State v. Stone*, 617 So.2d 355, 356 (Fla. 4th DCA 1993), a judge specially concurred with the court's per curiam opinion noting that the court did not decide whether probation is a viable alternative sentence where a defendant has a prior and current forcible felony, making him statutorily ineligible for a community control sentence. Another judge

in *State v. Stone* dissented from the majority opinion stating that resentencing for the offender may not include probation as a viable sentencing alternative. This dissenting judge reasoned that:

> "[i]f the Legislature would not allow one convicted of a forcible felony to be placed on community control if previously convicted of a forcible felony, it logically follows that it was most certainly the legislative intent that one convicted of a forcible felony not be placed on probation if previously convicted of a forcible felony."

Changing Needs for a Community Control Program

At the time it was created, community control was conceptualized as a diversionary program. The court was required to determine that, considering the facts of the case before it and the offender's record, probation was an unsuitable dispositional alternative to imprisonment. Therefore, the language that created the Community Control Program targeted offenders who would go to prison if it was not for the existence of the community control program.

Within recent years, however, Florida's need to divert offenders from prison to alleviate prison overcrowding has subsided. Changes to Florida's criminal sentencing laws in the mid- to late-1990's have also impacted the need for community control as a diversionary program. More recent criminal sentencing laws have followed two paths but have had one common theme. One path latently limits judicial discretion, such as with the passage of the Criminal Punishment Code. The Code has the appearance of lending itself to more judicial discretion, but only if that discretion results in a tougher sentence. The other path patently limits judicial discretion by imposing minimum mandatory sentences with the passage of such legislation as the "Three Strikes You're Out" Law and "10-20-Life" Law. The common theme of this criminal sentencing legislation has been to be tougher on criminals by accentuating prison sentences. All of these types of criminal sentencing laws have established "floors" or the lowest possible sentence that offenders should receive as punishment, but authorize higher sentences to be imposed.

Changes in criminal sentencing laws and the availability of many prison beds have changed the context for the need of a community control program in Florida. Rather than serving as a diversionary program, community control may best fit as an intermediate sanction in a continuum of sanctions to best match offenders to the most fitting punishment under the circumstances of the case. Community control provides a higher level of supervision and imposes more stringent responsibilities upon offenders than ordinary probation.

Community Control Caseloads

Community control is heavily used by the courts as a sentencing option for felony offenders. As of December 31, 1999, the department reported a total of 11,750 offenders that were on community control supervision. At that time, there were reportedly 518 certified officers who supervised the 11,750 cases.

In most parts of the state, caseloads of community control officers remain near the statutorily authorized number, which is currently a maximum of 25 cases to one officer.
See, s. 948.10(2), F.S. According to the department, the 25 to one ratio is the statewide average.

However, it is not uncommon for the number of cases to temporarily exceed the authorized amount in most areas to as many as 30 to 33 cases.

Standards of Supervision

Current departmental minimum-contact standards for community control supervision mandate a much higher number and types of contacts that must be made by officers than regular probation. They must make a total of at least three contacts per week with the offender and members of the community having information about the offender's activities. Two of these contacts must be face-to-face with the offender. One of these "in person" contacts with the offender must be in the field, such as at the offender's home or work place. Personal contacts by officers are required to occur even on holidays. The community control officer must make at least one "collateral" weekly contact with someone in the community, such as the offender's employer, teacher, parent, or community service recipient. The department has standards that require field contacts to be random and at various times of the day or night.

Chapter 948, F.S., which governs offenders on community supervision, imposes certain conditions of supervision for community control offenders. Typically, an offender has court costs and restitution to pay, counseling or specialized education to obtain, community service to perform, and certain areas or persons to keep away from. A written sentencing order by a circuit court ultimately provides the conditions of supervision that require certain actions and behavior by an offender and prohibit an offender from engaging in certain activities.

Offenders on community control are court-ordered to remain within the confines of their *approved* residence and may only leave the confines of their homes for certain reasons that are either dictated by the court or by departmental program policy. The authorized reasons mainly consist of work, community service, medical needs, or subsistence needs. All offender movements that take an offender outside his or her home are required to be pre-approved by an offender's supervising officer.

Community control offenders are supervised by "Correctional Probation Senior Officers." As part of community control supervision, the number of required face-to-face officer contacts with offenders are increased compared to regular probation. Increased contacts include weekly office visits with community control officers compared to probationers' office visits which are monthly. Most offenders on community control are on what is referred to as Community Control I, or non-electronically monitored community control. However, an offender may also be electronically monitored to augment the supervision of offenders to ensure compliance with being at home or only traveling to and from the places an offender is pre-authorized to go. Called Community Control II, community control supervision with electronic monitoring has historically been accomplished through a radio-frequency technology, but in recent years has moved toward a satellite-tracking technology.

Violations of Community Control Supervision

Community controllees have a higher technical violation rate than offenders who are on regular probation. A technical violation occurs when an offender does not perform a court-mandated action or does not refrain from a court prohibition. Examples of technical violations include: not

paying restitution, not being home when an offender does not have permission from his or her supervision officer to be elsewhere, failing a drug test, or not weekly reporting to the officer's office one or more times.

According to the DOC, for FY 1998-99, the rate of technical violations for offenders on felony probation was 18.6 percent. The rate of technical violations for community controllees was 38 percent, which is more than double that of felony probation. The judicial circuits with the three highest numbers of technical violations in FY 1998-99 were in: the Thirteenth Circuit (Tampa) at 2,712, the Sixth Circuit (Clearwater) at 1,560, and the Seventeenth Circuit (Fort Lauderdale) at 1,061.

For FY 1998-99, the violation rate for the commission of a new offense among probationers and community controllees was approximately the same. The new offense violation rate for felony probationers was 15.3 percent compared to a rate of 15.8 percent for community controllees. The judicial circuits with the three highest number of new-offense violations in FY 1998-99 were in: the Thirteenth Circuit (Tampa) at 930, the Sixth Circuit (Clearwater) at 693, and the Eighteenth Circuit (Sanford) at 319.

The explanation for a higher technical violation rate seems to be that these offenders are monitored more closely and are, therefore, more readily "caught" at their non-compliances. As for the similar new offense violation rates, it can be opined that community control is protecting public safety to the extent that it typically supervises more "serious" or "violent" offenders, but limits possible criminal activity to the same level that is conducted by the less "serious" offenders who are supervised on felony probation.

An offender that does not comply exactly with the court-ordered conditions of supervision does not necessarily face a violation of community control hearing. Sentencing judges exercise a tremendous amount of discretion when dealing with violations. It was learned by Senate staff that judges have been known to tell community supervision officers which types of violations they want to hear about or the number of violations that must occur, such as three failures to report, before they want to hear about it. Judges have also been known to communicate which types of violations they do not want to hear about, such as non-payment of cost of supervision or failed drug tests. There seems to be no hard and fast rule for this judicial discretion. It is anticipated that the judiciary would want to keep this prerogative to handle alleged violations of a judicial order as the court sees fit.

There remains a question, however, whether this discretion conforms to the expectations of the Legislature and the public. There seems to be a discrepancy between what the public believes happens when a person "violates" a condition of his or her supervision and what the courts do in situations where there is ostensibly a violation by a community controllee.

Offenders do not automatically have their sentence revoked and do not necessarily go to prison if they violate conditions of their community control. Although a prison sentence may be an option, many alternatives exist for a court to deal with offenders who violate his or her community control. For instance, a court may continue the term of supervision and add more conditions to that supervision. The court could revoke the supervision and send the offender to prison. It seems

as though the punitive consequences for violations of supervision are only limited by the creativity of the court and the legality of the sentence.

Prosecutors and public defenders have reportedly observed instances wherein judges have ordered a continuation of community control supervision after an offender has violated his or her terms of supervision. Anecdotally, it was represented by several persons who were interviewed by committee staff while gathering information for its interim project report that it was not uncommon to see judges continue supervision after two and three instances of an offender violating his or her community control. In more extreme cases, a court has reduced an offender's community control sentence to a sentence of regular probation because community control was "too difficult" for an offender to comply with and successfully complete. In the most extreme cases, it was noted that courts have actually terminated offenders from supervision out of frustration with an offender's inability to comply with his or her terms of supervision.

The DOC's data reveals the following information about judicially imposed sanctions for community control revocations. For offenders admitted to community control in 1996 and 1997, data compiled as a two-year revocation analysis reflects that there was a total of 2,354 community controllees who were revoked for committing a new offense. During the same period, 5,296 community controllees were revoked for technically violating their supervision. For new offense revocations, nearly 44 percent received state prison time as a sanction; over 31 percent received county jail; almost 19 percent received a new term or continuation of community control; and approximately 5 percent received some form of probation or a lesser sanction, including release from supervision. For technical violations, just over 34 percent received state prison for a sanction, almost 40 percent received county jail; over 21 percent received a new term or continuation of community control; and nearly 5 percent received some form of probation or a lesser sanction, including release from supervision.

Electronic Monitoring

Community Control II is intensive probation that is identical to Community Control I, but is augmented by electronic monitoring. Until recently, the technology generally employed by the department has been radio-frequency monitoring units. Radio-frequency (RF) monitoring is a passive system that works through equipment that operates through an offender's residential telephone system. For several years, the department has maintained a contract with BI, Inc., as the service provider for RF monitoring. Radio-frequency monitoring is considered to be "passive" because it can identify when an offender is home, but it cannot identify the location of an offender when he or she leaves the confines of his or her home.

For the last several years, the Legislature has appropriated funding to the department to have the capability to have as many as 1,100 RF units in operation at any given time. According to the department, as of December 31, 1999 the actual number of offenders on RF monitors was 317 offenders. The cost per day average is unclear, but appears to be between $2.50 and $3.00 per offender.

A Global Positioning System (GPS) pilot project was funded by the Legislature in 1997 at $100,000 to experiment with new technology in electronically monitoring offenders. The pilot project led to the DOC entering into a contract with Pro-Tech Monitoring, Inc., which is a

Florida-based company co-founded by former Governor Martinez. Pro-Tech and Advanced Business Science (ABS) were the only companies that bid on the pilot project, but ABS withdrew its bid prior to the award of the contract. Despite the “pilot” nature of the project, the contract with Pro-Tech was signed for a 5-year period.

The GPS system is considered to be an “active” type of monitoring system because, notwithstanding any uncorrected differential that may be involved in this particular system, the tracking device can basically identify the location of an offender when he or she leaves his or her residence. It can provide a location of an offender anywhere in the community.

The GPS offender monitoring system works through a satellite network with a tie-in with cellular phone systems. The GPS-monitored offender must carry a battery-operated, box-like apparatus that interacts with satellites by signals to indicate the location of the offender. Like with RF monitoring, an offender wears an ankle bracelet to ensure that he or she stays within a short distance of the transmitter box. The offender has a portable charging station that plugs into an electrical outlet to replenish the battery in the box unit. The box has a digital display and can warn an offender through an alarm and written display when and how an offender is violating a condition of his or her supervision if such a service is paid for by the department. In turn, officers are notified via a beeper that a violation has been detected. Officers must be available 24-hours a day to be able to respond to alleged violations. As of December 31, 1999, the department reports 272 offenders were being monitored by using the GPS technology.

Based on its conclusion that Global Positioning System (GPS) tracking is the most sophisticated and comprehensive method of offender tracking, the new administration of the DOC has made a policy decision to seek additional funding for GPS tracking while continuing to utilize radio frequency monitors. The cost per day average to put a GPS unit on an offender is now $9.26, according to the department. This cost is down from an initial cost average of approximately $14.50.

The switch in technology does not reduce the number of offenders that will be electronically monitored. For many years, the department has had the capacity to electronically monitor approximately 650 offenders by radio-frequency ankle monitors. The 1997 Legislature provided funding for the initial GPS pilot project to enable 40 offenders to be on GPS. However, at the end of the department’s technology conversion, there will be approximately 305 GPS units in operation and approximately 400 RF units in operation. Snapshots of the conversion are as follows. On June 30, 1999, there were 758 offenders who were being electronically monitored by RF devices. An additional 119 offenders were being electronically monitored via satellite tracking. As of July 23, 1999, the number of radio-frequency monitors in use had reduced to 679 and the number of GPS units in use for community control cases had increased to 133. By August 20, 1999, the number of radio-frequency monitors in operation was 655 while the number of GPS monitors in use had increased to 194.

Supervision of offenders who are on the GPS system is a more time-consuming endeavor for officers than RF monitoring. Having offenders on the GPS system requires community control officers to be on-call, 24-hours per day. Officers have to be available and able to respond to the scene when their beeper notifies them that a violation has occurred by a GPS offender.

Probation Officer Equipment and Other "Tools"

It appears that community control officers are not as efficient as they could be because of a dearth of adequate equipment. Community supervision cases generate a large amount of paperwork throughout the process. Most of the paperwork is not computer-generated, but handwritten, which is very time-consuming. Officers spend an inordinate amount of time filling out forms for the Court Ordered Payment System (COPS). Additionally, the manual for the system's operation is extraordinarily large. Officers must enter all case notes for every offender supervised on the Offender-Based Tracking System. This system is also cumbersome, inconvenient, user-*un*friendly, and out-dated. The computer-based systems for community supervision involve archaic data entry units that have very limited abilities. The mainframe is available for limited hours of the week, making it difficult for officers to transcribe their handwritten notes from the field into the tracking system computer. This system also involves an officer spending much more time with multiple transcriptions of notes for record-keeping to accommodate the current system.

Officers' work hours are limited to minimize overtime, which must be preapproved by a supervisor. As a result, officers must be creative in being as efficient as possible taking case notes and completing required paperwork, but such inherent inefficiencies lessen the time that is devoted to the actual supervision of offenders. Senate staff found that updating equipment, such as desktop personal computers with better software, would assist officers in being more efficient with the ministerial duties of their jobs. Acquiring lap-top computers for officers in the field was also suggested by Senate Criminal Justice Committee staff in its 1999-2000 interim report. Field notes could be entered once, rather than handwriting in the field and then typing them into the mainframe at the office at a future time. Using laptops would also encourage more detailed and accurate field notes which should enhance the level of supervision and its reliability in court.

The GPS tracking system requires community control officers to use a personal computer with software that tracks offenders through satellite signals. Computers that are adequate to use the software for the GPS system are currently very scarce in the field offices. The offices that were visited by Senate staff during the 1999-2000 interim had only one computer that had to be used by all the officers in that office who have offenders on GPS. The entering of approved offender schedules, the daily offender movements, and current location of an offender must be observed on the one computer by the officers with GPS cases. Therefore, in those instances, officers had to coordinate with each other to take turns using the computer to conduct needed work for their respective caseloads.

Criminal Justice staff also reported finding that the personal safety of officers may be more endangered by the inadequacies of equipment that exist at the field office level. Equipment, such as radios and cell phones, are absolutely necessary for community control officers to make their field contacts. Phones are necessary to call offenders when they are not where they are supposed to be. Offenders are notorious for claiming in violation hearings that they were home and did not hear the officer at the door. Calling helps back up an officer's testimony in a violation hearing. Officers can also confirm facts with his or her office when field contacts are unsuccessful. Eight hundred megahertz radios protect officer safety by allowing officers to call for law enforcement assistance. A wide variety of information can also be obtained from law enforcement and communicated by community control officers to law enforcement through such radios.

All community supervision officers who have a caseload use their own personal vehicles to make field contacts with offenders and collateral sources. Officers receive twenty-nine cents per mile which is supposed to reimburse officers for gasoline, wear and upkeep, and insurance. The staff report found there was unanimous agreement that this current rate of "reimbursement" was inadequate to place officers in a position of allowing them to "break even" in expenses or to make it financially advantageous to use their own vehicles. Many officers have experienced vandalism to their cars, which must be addressed through their personal insurance on their own time. If funded, it is possible that the Department could maintain some cars that may be used by officers who do not desire using their personal vehicles, which could make the job more attractive and curb officer turnover or entice new hires.

All officers with a community supervision caseload are not allowed to possess a firearm while in his or her employing office. Officers who are certified to carry a firearm are allowed to carry a firearm while in the field. However, all certified officers must purchase their own firearm; the Department does not supply one if an officer desires to carry one.

III. Effect of Proposed Changes:

Section 1. Legislative intent is provided with regard to making offender information easily accessible to the public. The DOC would be required to compile certain information about offenders who are being supervised by the department in the community except those individuals being supervised under the Pre Trial Intervention Program. The department would be required to compile the names, current addresses, and offense convictions, regardless of adjudication, for each offender under community supervision by the DOC. Such information must be reasonably accessible to the public. The department must also make photographs of such offenders equally accessible to the public. (It should be noted that Section 10 of the bill amends s. 948.03, F.S., to make it a standard condition of community supervision that the offender submit to the taking of such a photograph, thereby giving the court enforcement authority. Those offenders who are currently being supervised on a straight probation or community control sentence are under no such order.)

The information that is publicly provided would be required to be consistently updated and kept current within 30 days of the department becoming aware of any change in information or status of an offender. If an offender is discharged from the custody or supervision of the department, or the status of an offender has changed, the department is required to remove the information from the compilation within 30 days after the department becomes aware of the discharge.

The provision of such information by the department would have to be accomplished within existing resources. Therefore, the department would be required to make such information easily accessible to the public regardless of whether the Legislature provides specific appropriations to carry out these responsibilities.

Section 2. Under this section, within existing resources or as funding is provided, the DOC should make sure that probation officers have any equipment that would be necessary to ensure that their jobs do not present an undue risk, which could be otherwise avoided with the use of certain tools. This section specifies that the department should provide probation officers with cellular phones and radios whenever the department deems it appropriate to do so.

Section 3. This section provides that probation officers requesting to carry firearms while on duty shall be allowed to do so, so long as the officer is qualified under the Criminal Justice Standards and Training Commission and DOC requirements. The firearms shall be issued by the department to those qualified officers. The section should be fully implemented by July 1, 2002. Until such time as the department issues the firearm to the probation officer, the department may allow the officer to carry a non-department issued firearm so long as no laws, administrative rules or Department policies are violated.

Section 4. This section requires the DOC to file an information technology plan with the Legislature by March 1, 2001. The plan should identify the needs of the department for computer and other equipment which would increase the efficiency of probation officers in their work. Furthermore, the section provides that the information technology plan must be reviewed in accordance with s. 216.0446, F.S.[1]

Section 5. The bill would amend s. 775.089, F.S., pertaining to victim restitution. The statute would be clarified to provide that if the DOC collects various court-ordered or statutorily mandated payments from an offender, including restitution, any offender payments must first be applied toward completely satisfying any victim restitution owed before payments can be applied toward any other financial obligation related to the offender's sentence. This provision would clarify that the Legislature's priority is the payment of victim restitution.

This would require the department to modify its Court-Ordered Payment System (COPS) to satisfy this clarification. This computerized payment and disbursement system maintained by the department currently applies any offender payment equally toward all of the offender's court-ordered financial obligations. This provision would eliminate the need for judicial administrative orders to order the department to apply all payments to restitution first until completely satisfied before all other obligations.

Section 6. Subsection (10) of s. 948.01, F.S., would be clarified. Courts would be prohibited from placing an offender on regular probation if they are statutorily prohibited from being placed on community control. This would address a perceived anomaly in the law and provide consistency in sentencing policy.

Reference to offenses considered to be "forcible felonies" as defined in s. 776.08, F.S., and exceptions to that definition would be deleted. The reference to forcible felonies would be replaced by a list of offenses and a statutory cross-reference for the offense that would be used to determine whether an offender may be placed into community control. A person would not be authorized to be placed into community control if he or she was:

(a) Convicted of or adjudication withheld for:
   1. murder pursuant to s. 782.04, F.S.;
   2. attempted felony murder pursuant to s. 782.051(1) or (2), F.S.;
   3. aggravated manslaughter pursuant to s. 782.07(2) or (3), F.S.;

[1] Section 216.0446, F.S., provides for review by the state's Technology Review Workgroup of the portions of agency strategic plans and legislative budget requests which concern information resources management.

4. vehicular manslaughter pursuant to ss. 782.071(2) or 316.193(3)(c)3., F.S;
5. vessel homicide pursuant to ss. 782.072(2) or 327.35(3)(c)3., F.S;
6. aggravated assault pursuant to s. 784.021, F.S.;
7. aggravated battery pursuant to s. 784.045, F.S.;
8. aggravated stalking pursuant to s. 784.048(3), (4), or (5), F.S.;
9. kidnaping pursuant to s. 787.01, F.S.;
10. false imprisonment of a child under the age of 13 pursuant to s. 787.02(3), F.S.;
11. making, possessing, throwing, projecting, placing, or discharging any destructive device, or threatening to do so, pursuant to ss. 790.161(2) (3), or (4), 790.1615(2), 790.163, or 790.164, F.S.;
12. sexual battery or attempted sexual battery pursuant to ch. 794, F.S.;
13. lewd or lascivious offenses committed upon or in the presence of a child under 16 years of age pursuant to s. 800.04, F.S.;
14. arson pursuant to ss. 806.01 or 806.031, F.S.;
15. armed burglary or burglary with an assault or battery pursuant to s. 810.02(2) or (3), F.S.;
16. robbery or attempted robbery pursuant to ss. 812.13 or 812.131(2)(a), F.S.;
17. carjacking pursuant to s. 812.133, F.S.;
18. home-invasion robbery pursuant to s. 812.135, F.S.;
19. aggravated child abuse pursuant to s. 827.03(2), F.S.; or
20. aircraft piracy pursuant to s. 860.16, F.S.; **and** the offender was

(b) Previously convicted of or adjudication withheld for an offense listed in paragraph (a).

By listing the offenses and the statutory cross-references, the legislative intent would be clear and a court would not be in a position to try to interpret the meaning of the general offense references that are made in the statutory definition of "forcible felony" in s. 776.08, F.S.

Subsection (11) of s. 948.01, F.S., would also be amended. Language would be inserted that would limit the authority of a sentencing court if an offender is found to have committed the same or a similar offense as the offense for which an offender is serving a community control sentence. The provision would prohibit an offender under such circumstances from being continued on community control, given a new sentence of community control if the court revokes the original sentence of community control, being placed on any form of probation, or being released from supervision, without the imposition of an incarcerative sentence. Therefore, the court would not be able to modify or run a new community supervision sentence either consecutively or concurrently with the original community control sentence. A court would not be able to lessen the severity of the supervision by modifying or revoking the original community control sentence to some form of probation. A court would also be prohibited from releasing or terminating an offender from supervision without the imposition of an incarcerative sentence.

Section 7. Subsections (1) and (2) of s. 948.03, F.S., are amended to make technical, conforming, and substantive changes. The standard conditions of probation that are not required to be orally pronounced to be binding on an offender would be expanded to require an offender to "remain law-abiding" and to "promptly submit to the taking of a digitized photograph at the request of a probation officer." The subsection would also specify that the costs for drug testing

must be paid for by the offender unless he or she fits the criteria outlined in s. 948.09 (3), F.S., which would allow for the department to waive payment.

Subsection (3) would be clarified that the DOC may electronically monitor an offender on community control *at the direction of the sentencing court* rather than at its own discretion.

Paragraph (5)(b) would be amended to clarify that the statutory provisions relate to sex offender community control as well as sex offender probation. Subparagraph (5)(b)1. would clarify that polygraph examinations would be required to be conducted by polygraphers who are specifically trained to polygraph sex offenders. With regard to sex offenders, it would also be clarified that electronic monitoring is determined to be appropriate and ordered by the court, not as deemed necessary by the probation officer or through a recommendation of the DOC.

Section 8. Section 948.032, F.S., would be amended to clarify that community control is included. It would be clarified that if a person is placed on community control and restitution is ordered, it must be a condition of the community control. If an offender on community control fails to comply with the condition to pay restitution, the court may revoke the community control. This practice is already undertaken for community control cases, so there would not be a practical effect on community control cases. All of the same criteria that a court must consider to determine whether an offender has the ability to pay would remain the same.

Section 9. Section 948.04, F.S., would be amended to expressly include community control. The provisions of this section already apply to community control cases, but all necessary places would include a reference to community control for consistency.

Clarification is provided that the maximum level of supervision is provided by the department for offenders under supervision for sexual battery and/or child abuse, unless the sentencing court directs otherwise pursuant to s. 948.03, F.S.

Obsolete language pertaining to the termination of probation would be deleted. Reference to "community control" would not be added to subsection (3) because early termination of community control supervision is addressed in s. 948.03 (5), F.S.

Section 10. Section 948.06(1), F.S., would be amended to reiterate a limitation on judicial authority in the event a person on community control violates his or her supervision by committing the same or a substantially similar offense for which the offender was originally sentenced to community control. The provision would prohibit an offender under such circumstances from being continued on community control, given a new sentence of community control if the court revokes the original sentence of community control, being placed on any form of probation, or being released from supervision, without the imposition of an incarcerative sentence. Therefore, the court would not be able to modify or run a new sentence either consecutively or concurrently with the original community control sentence. A court would not be able to lessen the severity of the supervision by modifying or revoking the original community control sentence to some form of probation. A court would also be prohibited from releasing or terminating an offender from supervision without the imposition of an incarcerative sentence.

Section 948.06 (4), F.S., would also be amended to create a limitation on the court's authority in the event an offender on community control is found to have violated his or her supervision in any material respect. A court would not be authorized to place an offender on a lesser form of supervision through a modification or imposition of a new sentence after a revocation if it finds an offender has violated his or her community supervision in any material respect. A court would also be prohibited from terminating an offender's community supervision as a result of an offender's violation without further penalty.

Section 11. A subsection (2) would be created in s. 948.11, F.S. It would require the DOC to maintain the capability to electronically monitor offenders through the use of radio-frequency technology and the global positioning system as funding is provided by the Legislature. The subsection would express the Legislature's intent that sentencing courts should have options for electronically monitoring offenders to maximize public safety and to make the appropriate monitoring of offenders as cost-efficient as possible.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Service providers for electronic monitoring would be financially impacted by this bill. However, the impact is presently indeterminate.

Crime victims may be financially impacted, in a positive way, by receiving restitution in a more timely fashion under the provisions of the bill.

C. Government Sector Impact:

This bill has been reviewed by staff of the Criminal Justice Estimating Conference and no significant impact on the prison population is expected as a result of its provisions. The

courts, prosecutors and public defenders may be indeterminately affected due to the restriction on plea bargaining which is inherent in the bill.

This bill requires DOC to provide its correctional probation officers with radios or cellular telephones. The non-recurring cost would be approximately $5.2 million. However, since the bill mandates this only to the extent it can be provided from existing resources, there should be no fiscal impact beyond the current level of appropriation.

The bill also requires the DOC to provide correctional probation officers with firearms. The estimated cost of this provision is between $1.4 and $1.8 million depending on the type of firearm. Since this provisions does not have to be fully implemented until July 1, 2002, there should be no adverse fiscal impact from this provision in FY 2000-01.

There will be an indeterminate cost associated with the requirement that digital photographs be taken of offenders under supervision. However, the bill requires the department to do this within existing resources.

Section 5 of the bill requires that restitution payments be fully paid before money collected from other court-ordered payments can be used for any other purpose. Based on FY 98-99 data, approximately 49 percent of ordered restitution had been paid prior to termination of the offenders' supervision (compared to 54 percent for all court order payments), representing approximately $21.5 million in uncollected restitution costs. As written, this bill would require $21.5 million currently being deposited into the General Revenue Fund or paid to the counties for state and local government operations, respectively, to be used for restitution payments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Fiscal Policy:
Removes a provision that would require funds to be diverted from the General Revenue fund or from county funds to pay for court-ordered restitution payments.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.