



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

*Community Control:* The term “community control” is defined in statute<sup>1</sup> as follows:

‘Community control’ means a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

Because community control requires a higher level of supervision than probation, a correctional probation officer is statutorily prohibited<sup>2</sup> from having more than 25 community controllees on his or her caseload. As of November 30, 2002, there were approximately 10,330 offenders on community control.

Section 948.03, F.S. contains a list of terms and conditions that a judge can impose upon an offender placed on community control. If a judge finds that an offender has violated a condition, the judge may revoke, modify or continue the community control.<sup>3</sup> If community control is revoked, the judge may impose any sentence which it might have originally imposed before placing the offender on community control. An offender on community control may be order to be confined to his or her residence while not at work or engaged in public service activities.<sup>4</sup> The Department of Correction can also electronically monitor an offender sentenced to community control.<sup>5</sup>

*Electronic Monitoring:* The department uses radio frequency (RF) electronic monitoring and Global Positioning Satellite (GPS) system electronic monitoring as an enhancement to community control supervision. RF monitors provide a means to determine if an offender leaves his or her residence without authorization, but cannot report the offender’s location outside of the residence. GPS monitors continuously track an offender’s movements and report if an offender leaves an “inclusion zone” or enters an “exclusion zone.” These zones are established according to the circumstances of the individual case. With active GPS systems, violations are immediately reported to an on-call officer for investigation and resolution. Passive GPS systems record the same information, but report only once a day instead of continuously.

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<sup>1</sup> s. 948.001(2), F.S.

<sup>2</sup> s. 948.10, F.S.

<sup>3</sup> s. 948.06, F.S.

<sup>4</sup> s. 948.03(2), F.S.

<sup>5</sup> s. 948.03(3), F.S.

As of January 31, 2003, 200 community controllees were on RF monitors and 382 were monitored by GPS systems. In total, this is approximately 5 percent of the community control population.

Section 948.03(3)(a)1, F.S., gives the department the discretion to place community controllees on electronic monitoring. However, in State v. Carson, 531 So.2d 1069 (Fla. 4th Dist., 1988), the Fourth District Court of Appeals specifically found that an offender's failure to submit to electronic monitoring ordered by the department could not be a basis for revocation of community control. As a result of this case and other decisions prohibiting revocation of probation or community control for violation of conditions not imposed by the sentencing court, the department does not exercise its discretion to require electronic monitoring.

*Statutory Ineligibility for Community Control:* An offender may not be placed on community control if the offender has been convicted or had a adjudication withheld for a forcible felony and has a previous conviction or a withhold of adjudication for a forcible felony<sup>6</sup>. The following offenses are forcible felonies: treason; murder; sexual battery; carjacking; home-invasion robbery; robbery; arson; kidnapping; 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.<sup>7</sup>

Despite the statutory prohibition against placing forcible felons on community control, the Department of Corrections reports that as of November 30, 2002, it was supervising 293 offenders who are statutorily ineligible for community control supervision. In all cases, these offenders were placed on community control by order of the sentencing court.

*Involvement of Senator Howard Futch:* The late Senator Howard E. Futch, then Chairman of the Senate's Committee on Criminal Justice, became aware of concerns about crimes committed by offenders on community control. On January 7, 2003, Senator Futch sent a letter to William Evers, Chairman of the Florida Corrections Commission, requesting that the Commission conduct an analysis of the community control program in order to assist the Legislature in developing legislative action. Senator Futch cited news reports about public safety concerns as well as the ineligible offenders. On March 17, 2003, the Commission filed a report entitled "A Review of the Community Control Program and Electronic Monitoring within the Florida Department of Corrections". The major findings were outlined in the executive summary of the report as follows:

- Community control is but one of several community based sanctions that are authorized by current statutory provisions.
- A relatively small number of offenders are placed on community control who are statutorily ineligible (approximately three percent of total community control population).
- Reasons for placement of ineligible offenders on community control vary in light of a very large and complex judicial system. A more complete analysis of reasons was limited by time constraints.
- The Department of Corrections is adequately funded for the supervision of the community control population at a caseload ration of 25 offenders to one officer. The allocation of positions for the supervision of the community control population is in need of constant review and change.
- The Department of Corrections has extensive policy and procedure in place for the operation of the community control program. Emphasis is placed on officer compliance to standards designed to ensure frequent contact with

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<sup>6</sup> s. 948.01(10), F.S.

<sup>7</sup> s. 776.08, F.S. The offenses of manslaughter and burglary are also listed in this section but are not included in list of offenses that disqualify an offender from being placed on community control. s. 948.01(10), F.S.

offenders by officers. Recent changes in policy should help further ensure that contacts with offenders are being conducted in accordance with established policy.

- The Department of Corrections has conducted research that clearly suggests that the use of electronic monitoring has a positive public safety impact. The Department of Correction should continue to conduct additional research that will determine the most cost-effective approach to the use of electronic monitoring upon sufficient data becoming available.
- An increased level of communication among participants in the sentencing process may lead to a better utilization of sentencing options.

*“A Review of the Community Control Program and Electronic Monitoring within the Florida Department of Corrections”, page 3.*

*Requirements contained in HB 1273:* The first section of the bill provides that the act shall be known as the “Senator Howard Futch Act”. HB 1273 amends section 948.10 to provide that if an offender is sentenced to community control by the court as part of a plea agreement and the offender is ineligible to be on community control, the department shall:

1. Notify the correctional probation officer assigned to supervise the offender of the offender’s status and require that the officer monitor the offender carefully. If possible, the department is to seek a modification of the offender’s sentence to provide for greater surveillance, monitoring or confinement.
2. Notify the sentencing judge within 30 days of imposition of the sentence that the offender was ineligible for placement on community control.
3. Report quarterly to the chief judge and the state attorney of each circuit on the placement of any ineligible offender on community control within the circuit.
4. Report annually to the Chief Justice of the Supreme Court on the placement of ineligible offenders on community control in order to assist the Supreme Court in preparing judicial education programs.

#### C. SECTION DIRECTORY:

Section 1: Providing that act shall be known by the popular name the “Senator Howard Futch Act”.

Section 2: Amending s. 948.10; requires DOC to notify the correctional probation officer and the judge if an ineligible person is placed on community control; requires quarterly reports to the chief judges on the placement of ineligible offenders.

Section 3: Providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

2. Expenditures: The Department of Corrections reports that HB 1273 will require the development of a new automated program to identify ineligible offenders which will cost approximately \$3,072.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS: The bill provides that, if possible, the department is to seek a modification of the sentence where an offender who is ineligible because of a conviction for a forcible felony is placed on community control. However, there does not appear to be a mechanism by which the department, who is generally not a party to the proceedings, could seek modification of a sentence after it is imposed. Further, resentencing an offender may raise double jeopardy concerns.

HB 1273 only addresses offenders sentenced as a result of a plea agreement. However, the statutory prohibition on offenders being sentenced to community control who have committed a forcible felony applies to all offenders, regardless of whether they entered into a plea agreement or were found guilty at trial. HB 1273 would therefore not address the placement of ineligible offenders on community control which were not placed in the program as a result of a negotiated plea agreement.

NOTE: The Subcommittee on Corrections recommended the adoption of a strike-all amendment that addresses both of these issues.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Corrections recommended the adoption of a strike-all amendment which contained the following modifications:

- Based on a similar recommendation contained in the Corrections Commission report, the amendment adds a subsection to s. 921.187 which relates to alternatives to the disposition of criminal cases. The subsection repeats the language already contained in s. 948.01 which prohibits the placement of an offender on community control if the offender has been convicted of a forcible felony and has a previous conviction for a forcible felony.
- The amendment alters the provisions of the original bill relating to the procedure that the department is to use if it finds that an ineligible offender has been placed on community control. Under the amendment, this procedure will be followed in all cases in which an ineligible offender is placed on community control, not only cases in which the offender was sentenced as part of a plea agreement. The amendment removes language that would have required the department to seek modification of the offender's sentence. In addition to a requirement that the department notify the sentencing judge, the amendment requires the department to notify the state attorney and the Attorney General that the offender was ineligible. The amendment retains the quarterly reporting requirements and provides that the annual report relating to the placement of ineligible offenders on community control will be sent to the Governor, the Senate and the House of Representatives in addition to being sent to the Supreme Court.
- The amendment requires DOC to develop and maintain a weighted statewide equalization strategy designed to ensure that high-risk offenders receive the highest level of supervision. The amendment also requires the department to develop and implement a supervision risk assessment instrument for the community control population which is similar to the probation risk assessment instrument established by the National Institute of Justice.
- The amendment requires DOC to include in its annual report a detailed analysis of the community control program including a list of specific information.
- The amendment also requires DOC to study the use of electronic monitoring and its effectiveness on the community control population and to report the findings to the Governor, the Senate and the House of Representatives. For purposes of the study, the amendment authorizes the department to adjust the maximum community control caseloads when electronic monitoring is used from July 1, 2003 until February 1, 2004.