

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 428
SPONSOR: Criminal Justice Committee and Senators Smith, Crist, Villalobos and others
SUBJECT: Community Control
DATE: March 13, 2003 REVISED: 03/25/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>JU</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>APJ</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This Committee Substitute amends s. 948.10, F.S., to require the Department of Corrections (DOC) to take certain actions if a court places an offender who is statutorily ineligible for community control supervision on community control. The CS requires the department to notify the judge, the state attorney, and the Attorney General of an offender's ineligibility within 30 days of receipt of the sentencing order. New reporting requirements are established to notify the judiciary and prosecutors about the placement of offenders on community control and to inform government leaders about the community control program and the department's efforts to protect the public from offenders on community control.

The CS requires the department to develop and maintain a caseload equalization strategy to ensure that high-risk offenders receive the highest level of supervision, and to develop and implement a risk assessment classification system for community control offenders.

Finally, the CS directs the department to study the use of electronic monitoring and its effectiveness for community control. The department would be permitted to suspend the caseload ratio requirement found in s. 948.10(2), F.S., during the period from July 1, 2003, until February 1, 2004. The findings must be reported to the Governor, the President of the Senate, and the Speaker of the House by February 1, 2004.

The CS substantially amends, creates, or repeals the following sections of the Florida Statutes: 948.10.

II. Present Situation:

A. Brief Outline of Community Control Supervision Program

Community control is a community-based punishment alternative to incarceration or regular probation. Section 948.001, F.S., defines it as “a form of intensive supervised house arrest in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.” Community control is intended for felons who are unsuitable for regular probation because of their criminal background or the seriousness of their crime, but for whom the court deems imprisonment to be unnecessary. Community control may also be appropriate for some felony probation or parole violators who commit technical or misdemeanor violations.

Because community control requires a higher level of supervision, s. 948.10(2), F.S., restricts a correctional probation officer from having more than 25 community controllees on his or her caseload. Violation of any community control condition may result in revocation by the court and imposition of any sentence which might have been imposed originally.

Data provided by the Florida Corrections Commission indicates that there were 10,131 offenders on community control as of November 30, 2002.

B. 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.

As of June 30, 2002, 228 community controllees were on RF monitors and 380 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.

C. Statutory Ineligibility for Placement on Community Control

An offender is statutorily ineligible for placement on community control if he or she has currently and previously been convicted or had adjudication withheld for a forcible felony, except for manslaughter or burglary. Included offenses are 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. ss 948.01(10) and 776.08, F.S.

Despite the statutory prohibition against placing forcible felons on community control, the Department of Corrections reports that it is supervising 287 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. Anecdotal information indicates that the majority of these placements were in accordance with a plea agreement entered into by the prosecution and the defense.

D. Senator Futch's Interest, Letter to Corrections Commission, and Filing of SB 428

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. In conducting a preliminary review of the issue, he and Senator Rod Smith discovered that ineligible offenders were being placed 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. Senator Futch requested the Commission to:

- validate the number of statutorily ineligible persons currently on community control (current and past);
- survey prosecutors, judges and probation officers and others to determine how ineligible offenders are placed on community control;
- determine how many of those who are statutorily ineligible for community control are monitored electronically (current and past);
- determine how many of those who are statutorily ineligible for community control have violated the conditions of community control (current and past) by technical violations or re-offending;
- audit department records to determine whether DOC is meeting the statutory requirement of a 25:1 supervisee/officer ratio statewide and, if not, whether there is a way to do so without additional appropriations;
- determine if there are localities in which DOC is not meeting the 25:1 requirement;

- identify and analyze quality assurance methods DOC uses to ensure meeting the supervision requirements;
- determine how the rate of offenses committed by community controllees compares with the offense rate of regular probationers and of the general public;
- determine if DOC can improve public safety in how it communicates with the court and monitors offenders;
- identify any efficiencies that would allow DOC to monitor offenders more cost-effectively; and
- analyze the impact of the phase-down of the radio-frequency monitoring units, determine whether the current ratio of GPS units to radio frequency units is optimal, and make recommendations as to the types of technology the state should invest in with the limited availability of funds.

In order to allow the Commission adequate time to research these issues, Senator Futch requested that the report be submitted to him by March 17, 2003. However, Senator Futch also filed SB 428 to address his immediate concern with the placement of ineligible offenders on community control. Senator Smith assumed sponsorship of the bill after Senator Futch's untimely death.

III. Effect of Proposed Changes:

This CS does not change existing law that makes certain repeat forcible felony offenders ineligible for placement on community control. However, it requires certain actions and reports that are intended to increase judicial and prosecutorial awareness of the situation and to enhance the department's ability to protect the public while supervising offenders.

Section 1 of the CS names the act the "Howard E. Futch Community Safety Act" in honor of Senator Futch and in recognition of his proactive efforts to protect public safety in this area.

Section 2 of the CS creates three new subsections of s. 948.03, F.S. New subsection (7) requires the department to take the following specific actions if a court sentences an offender to placement in community control as part of a plea agreement even though the offender is statutorily ineligible for such placement:

- Review community control placements and verify whether an ineligible offender was placed on community control.
- Notify the sentencing judge, the state attorney and the Attorney General that the offender was ineligible for placement on community control within 30 days of receipt of the sentencing order.

- Provide a quarterly report of the number of ineligible offenders placed on community control within each circuit to the chief judge and state attorney of that circuit.
- Provide an annual report to the Governor, the President of the Senate, the Speaker of the House, and the Chief Justice of the Florida Supreme Court about the placement of ineligible offenders on community control. This report is intended for use in preparing judicial education programs or for any other purpose.

New subsection (8) of s. 948.10, F.S., requires the department to develop and maintain a weighted caseload equalization strategy. This strategy is to be designed to ensure that high-risk offenders receive the highest level of supervision by recognizing that certain types of cases require more intensive supervision than other cases. The department is also required to develop and implement a supervision risk control instrument for offenders on community control. This type of classification system should enable the department to identify the community controllees who require the most intensive supervision and to allocate resources accordingly.

New subsection (9) of s. 948.10, F.S., specifically requires the department to include certain information in the annual report that is provided to the Governor, the President of the Senate and the Speaker of the House pursuant to s. 20.315(5), F.S. The report must include a detailed analysis of the community control program and of efforts to protect the public from community controllees. Other required information includes specific information on the department's ability to meet minimum contact standards, the number of crimes committed by community controllees and the level of supervision that is provided.

Section 3 of the CS requires the department to study the effectiveness of using electronic monitoring in the community control program. In order to conduct the study, the department is authorized to deviate from the statutory maximum 25:1 officer to offender caseload during the period from June 1, 2003, to February 1, 2004 when electronic monitoring is used.

Section 4 of the CS provides an effective date of July 1, 2003.

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:

None.

C. Government Sector Impact:

This bill requires the Department of Corrections to review the records of offenders placed on community control and to notify the sentencing court, state attorney, and Attorney General if an offender is ineligible for such placement. This additional workload requirement could have a fiscal impact, but the amount has not been determined. Similarly, maintaining a weighted caseload equalization strategy and implementing a classification system for community control could have an undetermined fiscal impact. Neither the requirement to study the use of electronic monitoring in the community nor the new reporting requirements should have a significant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.