

# 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.)

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Prepared By: Criminal Justice Committee

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BILL: CS/SB 146

INTRODUCER: Criminal Justice Committee and Senator Dockery

SUBJECT: Anti-Murder Act

DATE: February 7, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill addresses probation and community control violations by designating certain alleged probation violators as “violent felony offenders of special concern.” If the offender is on probation or community control for one of the qualifying offenses, any violation of the conditions of supervision other than failure to pay costs, fines, or restitution causes designation as a violent felony offender of special concern. If the offender is on probation or community control for another type of offense, being found to have committed a qualifying offense triggers the designation. A person who is designated as a violent felony offender of special concern cannot be released from jail until the court has held a hearing to determine whether supervision was violated. If supervision was violated, the court must determine whether to revoke or continue the probation or community control. The court must also determine and enter a written finding as to whether the violent felony offender of special concern is a danger to the community. If it is determined that the violator is a danger to the community, the court must revoke probation or community control and sentence the offender according to the Criminal Punishment Code, up to the statutory maximum or longer if permitted by law.

The Criminal Punishment Code provides a point system to determine an offender’s minimum sentence. Currently, violation of probation or community control by commission of a new felony adds an additional 12 points to the score, and violation for any other reason adds 6 points. For a violent felony offender of special concern, the bill increases the additional points to 24 for felonies and 12 for other violations.

The bill substantially amends sections 921.0024 and 948.06, Florida Statutes, creates sections 903.0351 and 948.064, Florida Statutes, and reenacts sections 948.012(2)(b), 948.10(9), and 958.14, Florida Statutes.

## II. Present Situation:

More than 110,000 offenders are actively supervised by the Department of Corrections on some form of community supervision. Florida law recommends community supervision for offenders who do not appear to be likely to re-offend and who present the lowest danger to the welfare of society. Generally, this includes those offenders whose sentencing score sheet result does not fall into the range recommending incarceration under the Criminal Punishment Code.

The two major types of community supervision are probation and community control. Community control is a higher level of supervision that is administered by officers with a statutorily mandated caseload limit. Both probation and community control are judicially-imposed sentences that include standard statutory conditions as well as any special conditions that are directed by the sentencing judge.

Approximately one-fourth of supervised offenders are on probation or community control for committing murder, manslaughter, a sexual offense, robbery, or another violent crime. Another one-fourth has theft, forgery, or fraud as their most serious offense, and drug offenders account for another one-fourth.

The statutory terms and conditions required of persons on probation or community control, as provided by s. 948.03, F.S., may include that the offender must:

- Report to the probation and parole supervisors as directed.
- Permit such supervisors to visit him or her at his or her home or elsewhere.
- Work faithfully at suitable employment insofar as may be possible.
- Remain within a specified place.
- Make reparation or restitution.
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility.
- Support his or her legal dependents to the best of his or her ability.
- Pay any monies owed to the crime victims compensation trust fund.
- Pay the application fee and costs of the public defender.
- Not associate with persons engaged in criminal activities.
- Submit to random testing to determine the presence or use of alcohol or controlled substances.
- Not possess, carry, or own any firearm unless authorized by the court and consented to by the probation officer.
- Not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician.
- Not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- Submit to the drawing of blood or other biological specimens.

The court may add other terms and conditions that it considers proper.

Section 948.06, F.S., provides procedures regarding violation of conditions of probation or community control. A police officer or a probation officer may make a warrantless arrest if he or she has reasonable grounds to believe that an offender violated probation or community control in any material respect. A judge may also issue an arrest warrant based upon reasonable cause that the conditions have been violated. At the first hearing on the violation, the court advises the offender of the charge. If the offender admits the truth of the charge, the court may immediately revoke, modify, or continue the probation or community control, or place a probationer into a community control program.

Once brought before the court for an alleged violation, the offender is advised of the charge. If the charge is not admitted, the court may commit the offender to jail to await a hearing, release the offender with or without bail (subject to a dangerousness hearing for certain sex offenders and sex offenses), or dismiss the charge. If the offender admits the charge or is judicially determined to have committed the violation, the court may revoke, modify, or continue community supervision. If supervision is revoked, the court must adjudge the offender guilty of the offense for which he or she was on community supervision, and can impose any sentence that could have been imposed at the original sentencing.

As of November 30, 2006, 35,828 violations were pending against offenders who are on active or active-suspense supervision status for any type of supervision (a total of 151,096 offenders). OPPAGA reports that offenders classified as maximum risk commit a disproportionate number of offenses that are defined as serious under the Jessica Lunsford Act. These include murder, sexual offenses, robbery, carjacking, child abuse, and aggravated stalking.

The Criminal Punishment Code, ss. 921.002 through 921.0027, F.S., is applicable to all felony offenses committed on or after October 1, 1998. The code provides a mathematical formula that determines the minimum sentence that a court may impose upon an offender. The minimum sentence is calculated based upon the total number of points assessed against the offender. If the total points exceed 44, the court must subtract 28 points and multiply by 75 percent. The resulting number is the minimum number of months in state prison that the offender must serve. However, the court may find that one or more of the mitigating circumstances at s. 921.0026, F.S., warrants a downward departure, except for capital felonies. Where a downward departure is granted, the court may sentence the offender to less than the minimum sentence.

If an offender is resentenced after being found guilty of violating the terms of his or her probation or community control, the total points are re-calculated, adding 12 points for a violation resulting from committing a new felony offense or 6 points for any violation other than a new felony offense. The additional points may cause the total score to exceed 44 and compel the sentencing court to impose a new state prison sentence unless it finds grounds for a downward departure.

### **III. Effect of Proposed Changes:**

This bill constitutes the “Anti-Murder Act.” It creates s. 903.0351, F.S., in the chapter concerning bail, concerning non-release of a violent felony offender of special concern who is arrested for an alleged violation of probation or community control. If the alleged violation is based on anything other than failure to pay costs, fines, or restitution, the offender cannot be

granted bail or any form of pretrial release prior to the hearing on the probation or community control violation charge.

Section 948.06, F.S., is amended to provide details of the Anti-Murder Act. The restriction against pre-trial release of violent felony offenders of special concern found in new s. 903.0341, F.S., is also added to s. 948.06(4), F.S. In addition, a new subsection (8) defines six categories of offenders who are a violent felony offender of special concern. These include offenders who are on probation or community control:

- For the commission of a qualifying offense committed on or after July 1, 2007.
- For any offense committed on or after July 1, 2007, and who have previously been convicted of or had adjudication withheld for a qualifying offense.
- For any offense committed on or after July 1, 2007, and who are found to have violated that probation or community control by committing a qualifying offense. The designation as a violent felony offender of special concern would only attach after the court finds that the offender has violated probation by committing a qualifying offense. Therefore, the restriction against release before the violation hearing would not apply.
- And who have been previously found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., and have committed a qualifying offense on or after July 1, 2007.
- And who have been previously found by a court to be a three-time violent felony offender as defined in s. 775.084(1)(c), F.S., and have committed a qualifying offense on or after July 1, 2007.
- And who have been previously found by a court to be a sexual predator under s. 775.21, F.S., and have committed a qualifying offense on or after July 1, 2007.

The term “committed” used in the last three categories of offender is susceptible to different interpretations. It appears that the designation as a violent felony offender of special concern would not attach until there has been a judicial determination that a qualifying act was “committed,” either through a conviction, finding that community supervision has been violated, or another judicial proceeding.<sup>1</sup>

The qualifying offenses are:

- Kidnapping or attempted kidnapping under s. 787.01, F.S., false imprisonment of a child under the age of 13 under s. 787.02(3), F.S., or luring or enticing a child under s. 787.025(2)(b) or (c), F.S.
- Murder or attempted murder under s. 782.04, F.S., attempted felony murder under s. 782.051, F.S., or manslaughter under s. 782.07, F.S.
- Aggravated battery or attempted aggravated battery under s. 784.045, F.S.

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<sup>1</sup> Consideration for release of offenders who are not affected by the no-release provision of this bill might still be restricted. Section 948.06(4), F.S., provides that certain sex offenders and sex predators cannot be released while awaiting a violation hearing unless the court enters a written finding that the offender is not a danger to the community. However, pretrial release under any conditions would be prohibited if such an offender also meets the criteria as a violent felony offender of special concern.

- Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), F.S., lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., F.S., lewd or lascivious conduct under s. 800.04(6)(b), F.S., or lewd or lascivious exhibition under s. 800.04(7)(c), F.S.
- Robbery or attempted robbery under s. 812.13, F.S., carjacking or attempted carjacking under s. 812.133, F.S., or home invasion robbery or attempted home invasion robbery under s. 812.135, F.S.
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025, F.S.
- Sexual performance by a child or attempted sexual performance by a child under s. 827.071, F.S.
- Computer pornography under s. 847.0135(2) or (3), F.S., transmission of child pornography under s. 847.0137, F.S., or selling or buying of minors under s. 847.0145, F.S.
- Poisoning food or water under s. 859.01, F.S.
- Abuse of a dead human body under s. 872.06, F.S.
- Burglary or attempted burglary that is a first-degree or second-degree felony, or any attempted burglary offense, under s. 810.02(2) or (3), F.S.
- Arson or attempted arson under s. 806.01(1), F.S.
- Aggravated assault under s. 784.021, F.S.
- Aggravated stalking under s. 784.048(3), (4), (5), or (7), F.S.
- Aircraft piracy under s. 860.16, F.S.
- Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4), F.S.
- Treason under s. 876.32, F.S.
- Any offense in another jurisdiction that would meet the definitions of these offenses if committed in Florida.

If a violent felony offender of special concern is alleged to have committed any violation of probation or community control other than a failure to pay costs, fines, or restitution, the court must hold a recorded violation hearing at which both the state and the offender are represented. If the court finds that the violent felony offender of special concern has violated any non-monetary term of probation or community control, it must decide whether to revoke the probation or community control. The court must also determine whether the offender poses a danger to the community. If the court determines that the violent felony offender of special concern is a danger, it must revoke probation or community control and sentence the offender under the Criminal Punishment Code up to the statutory maximum for the underlying offense.<sup>2</sup> If the offender is found not to be a danger to the community, the judge would have the same options that it has with any other violator, including continuing community supervision.

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<sup>2</sup> The bill allows an offender to be sentenced above the statutory maximum if permitted by law. For example, s. 921.0024(2), F.S., provides that if the lowest permissible sentence under the Criminal Punishment Code exceeds the statutory maximum sentence provided in s. 775.082, F.S., the higher sentence required by the Code is applied.

The bill does not specify that a hearing is required for the court to make its dangerousness determination, but does require that the finding of dangerousness be made based upon a preponderance of the evidence. The bill sets forth a number of factors that may be considered by the court in determining dangerousness, and requires the court to enter a written order in support of its findings.

The bill also amends the Criminal Punishment Code (s. 921.0024, F.S.) to increase the number of Community Sanction Violation Points that are added to the violent felony offender of special concern's Total Sentence Points as a result of the violation. These additional points will have the effect of lengthening the lowest permissible sentence. The bill increases the additional assessment to 12 points for a technical violation or new misdemeanor offense, as opposed to the 6 points assessed under current law. For a violation involving commission of a new felony, the bill increases the assessment to 24 points from the current 12 points.

The bill creates s. 948.064, F.S. This new section is intended to provide the courts and criminal justice system with a means of readily identifying offenders who are violent felony offenders of special concern. The requirements are:

- The Department of Corrections must develop a system for identifying violent felony offenders of special concern in the department's database and post a list of the offenders on the Florida Department of Law Enforcement's Criminal Justice Intranet no later than October 1, 2007.
- The county jail where the offender is booked must insure that state and national criminal history information and information in the Florida Crime Information Center and the Federal Crime Information Center is provided to the court at the offender's first appearance.
- The courts must create and maintain an automated system to provide the information to the court that has jurisdiction to conduct the hearings.

The bill includes a severability clause providing that a finding that one section is invalid does not affect the remainder of the Act. It also provides that the Act is effective upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill could have a significant fiscal impact on counties but appears to be exempt from the provisions of Article VII, Section 18 (a) of the Florida Constitution because it amends a criminal law.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

An offender who is defined as a violent felony offender of special concern under new ss. 948.06(8)(b)1.d., e., or f., F.S., (habitual violent felons, three-time violent felons, and sexual predators), would have a potential *ex post facto* challenge to the assessment of increased Community Sanction Violation Points. This is a concern for offenders in these categories whose probation or community control was imposed prior to the effective date of the Act.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

**State Government**

The Criminal Justice Estimating Conference has not yet determined the bed space impact of the bill. However, the Office of Economic and Demographic Research has provided the following information on the estimated costs of the bill. This does not take into account the impact of the Act’s taking effect upon becoming a law, rather than on July 1, 2007.

<b>Fiscal Impact of CS/SB 146</b>						
<b>Primary, Additional, and Prior Offenses Considered</b>						
			<b>FUNDS REQUIRED</b>			
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2007-2008	48	48	\$477,264	\$21,924,000	<b>\$22,401,264</b>	<b>\$22,401,264</b>
2008-2009	420	372	\$4,737,096	\$37,963,458	<b>\$42,700,554</b>	<b>\$65,101,818</b>
2009-2010	1,122	702	\$15,888,768	\$41,291,162	<b>\$57,179,930</b>	<b>\$122,281,748</b>
2010-2011	1,859	737	\$31,269,200	\$37,495,778	<b>\$68,764,978</b>	<b>\$191,046,726</b>
2011-2012	2,505	646	\$46,646,796	\$30,967,986	<b>\$77,614,782</b>	<b>\$268,661,508</b>
<b>Total</b>	<b>2,505</b>	<b>2,505</b>	<b>\$99,019,124</b>	<b>\$169,642,384</b>	<b>\$268,661,508</b>	<b>\$268,661,508</b>

**Local Government**

The impact on local government is indeterminate but could be significant. The bill requires a violent felony offender of special concern to be detained without bail pending the final hearing on the violation charge. As such, the violator will be held in a county jail at county expense. One factor that makes it difficult to estimate the financial impact upon local government is a lack of data concerning how many affected offenders are jailed pending a violation hearing under current practice. The financial impact will also be

mitigated if passage of the bill results in more discretionary enforcement for probationers or community controllees who do not fall into the high-risk category of being a violent felony offender of special concern.

The Office of the State Courts Administrator (OSCA) estimates that the bill will have a significant impact on the court system due to increased judicial workload from new first appearances, time required for danger to the community hearings, and an increase in the number of trials and appeals. The office also estimates that there will be a 5 percent increase in the number of trials conducted throughout the state for cases arising under this legislation due to the increased consequences of a conviction.

Based upon its estimates of increased workload, OSCA projects that the bill will require 5 additional circuit court judges the first year that it is implemented, 17 circuit court judges in the second year, and 28 circuit court judges in the third year as well as additional support resources each year. It also projects that the increased appellate workload would require 1 additional district court judge in the second year and 2 additional district court judges in the third year. OSCA also notes that the mandates of the bill could also impact other divisions in the court system by slowing down those divisions if judges and resources were shifted away from them to the criminal area to dispose of these cases.

In order to meet the technical requirements of disseminating information to the courts, OSCA estimates that it will need one-time funding of \$206,800 to purchase additional computer servers and necessary software licensing, and an annual need of an additional \$10,000 to expand to 24-hour vendor support. It also projects a need to employ an additional computer consultant to provide training and support for users of the Justice Information System.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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

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