

By Senator Dockery

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A bill to be entitled
An act relating to violent felony offenders of special concern; creating the Anti-Murder Act; creating s. 903.0351, F.S.; denying bail or any form of pretrial release to violent felony offenders of special concern under certain circumstances; amending s. 948.06, F.S.; providing definitions; requiring that a violent felony offender of special concern remain in custody pending a hearing on a violation of probation or community control; providing for the hearing to determine the nature and probability of any danger that the violent felony offender of special concern poses to the community before release of the violator following a violation of probation or community control; providing criteria to determine the danger posed by a violent felony offender of special concern; amending s. 921.0024, F.S.; revising computations under the Criminal Punishment Code to provide additional points for a community sanction violation when a community sanction violation is committed by a violent felony offender of special concern; reenacting ss. 948.012(2)(b), 948.10(9), and 958.14, F.S., relating to a split sentence of probation or community control and imprisonment, community control programs, and the violation of probation or community control programs, to incorporate the amendment to s.

1 948.06, F.S., in references thereto; providing
2 an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. This act may be cited as the "Anti-Murder
7 Act."

8 Section 2. Section 903.0351, Florida Statutes, is
9 created to read:

10 903.0351 Violent felony offenders of special concern;
11 bail hearing required.--A violent felony offender of special
12 concern, as defined in s. 948.06, who has been arrested for an
13 alleged violation of probation or community control may not be
14 granted bail or any form of pretrial release before the
15 resolution of the hearing on the violation of probation or
16 community control unless the charge or arrest is based solely
17 on the offender's failure to pay costs, fines, or restitution.

18 Section 3. Subsection (4) of section 948.06, Florida
19 Statutes, is amended, and subsection (8) is added to that
20 section, to read:

21 948.06 Violation of probation or community control;
22 revocation; modification; continuance; failure to pay
23 restitution or cost of supervision.--

24 (4) Notwithstanding any other provision of this
25 section, a probationer or an offender in community control who
26 is arrested for violating his or her probation or community
27 control in a material respect may be taken before the court in
28 the county or circuit in which the probationer or offender was
29 arrested. That court shall advise him or her of ~~the~~ such
30 charge of a violation and, if such charge is admitted, shall
31 cause him or her to be brought before the court ~~that~~ which

1 granted the probation or community control. If the ~~such~~
2 violation is not admitted by the probationer or offender, the
3 court may commit him or her or release him or her with or
4 without bail to await further hearing. However, if the
5 probationer or offender is under supervision for any criminal
6 offense proscribed in chapter 794, s. 800.04(4), (5), (6), s.
7 827.071, or s. 847.0145, or is a registered sexual predator or
8 a registered sexual offender, or is under supervision for a
9 criminal offense for which he or she would meet the
10 registration criteria in s. 775.21, s. 943.0435, or s. 944.607
11 but for the effective date of those sections, the court must
12 make a finding that the probationer or offender is not a
13 danger to the public prior to release with or without bail. In
14 determining the danger posed by the offender's or
15 probationer's release, the court may consider the nature and
16 circumstances of the violation and any new offenses charged;
17 the offender's or probationer's past and present conduct,
18 including convictions of crimes; any record of arrests without
19 conviction for crimes involving violence or sexual crimes; any
20 other evidence of allegations of unlawful sexual conduct or
21 the use of violence by the offender or probationer; the
22 offender's or probationer's family ties, length of residence
23 in the community, employment history, and mental condition;
24 his or her history and conduct during the probation or
25 community control supervision from which the violation arises
26 and any other previous supervisions, including disciplinary
27 records of previous incarcerations; the likelihood that the
28 offender or probationer will engage again in a criminal course
29 of conduct; the weight of the evidence against the offender or
30 probationer; and any other facts the court considers relevant.
31 The court, as soon as is practicable, shall give the

1 probationer or offender an opportunity to be fully heard on
2 his or her behalf in person or by counsel. After ~~the such~~
3 hearing, the court shall make findings of fact and forward the
4 findings to the court ~~that which~~ granted the probation or
5 community control and to the probationer or offender or his or
6 her attorney. The findings of fact by the hearing court are
7 binding on the court ~~that which~~ granted the probation or
8 community control. Upon the probationer or offender being
9 brought before it, the court ~~that which~~ granted the probation
10 or community control may revoke, modify, or continue the
11 probation or community control or may place the probationer
12 into community control as provided in this section. However,
13 if any violation other than a failure to pay costs, fines, or
14 restitution is alleged to have been committed by a violent
15 felony offender of special concern, as defined in subsection
16 (8), the probationer or offender may not be released and may
17 not be admitted to bail but shall be brought before the court
18 that granted the probation or community control.

19 (8)(a) In addition to the provisions of subsections
20 (1)-(7), this subsection provides further requirements
21 regarding a probationer or offender in community control who
22 is a violent felony offender of special concern. The
23 provisions of this subsection shall control over any
24 conflicting provision in subsections (1)-(7).

25 (b) For purposes of this subsection and ss. 903.0351
26 and 921.0024, the term:

27 1. "Violent felony offender of special concern" means
28 a person who is on probation or community control:

29 a. For the commission of a qualifying offense
30 committed on or after July 1, 2007;

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1 b. For any offense committed on or after July 1, 2007,
2 and who has previously been convicted of or had adjudication
3 withheld for a qualifying offense;

4 c. For any offense committed on or after July 1, 2007,
5 and who is found to have violated that probation or community
6 control by committing a qualifying offense;

7 d. And has been previously found by a court to be a
8 habitual violent felony offender as defined in s.
9 775.084(1)(b) and has committed a qualifying offense on or
10 after July 1, 2007;

11 e. And has been previously found by a court to be a
12 three-time violent felony offender as defined in s.
13 775.084(1)(c) and has committed a qualifying offense on or
14 after July 1, 2007; or

15 f. And has been previously found by a court to be a
16 sexual predator under s. 775.21 and has committed a qualifying
17 offense on or after July 1, 2007.

18 2. "Qualifying offense" means any of the following:

19 a. Kidnapping under s. 787.01, false imprisonment of a
20 child younger than 13 years of age under s. 787.02(3), or
21 luring or enticing a child under s. 787.025;

22 b. Murder or attempted murder under s. 782.04,
23 attempted felony murder under s. 782.051, or manslaughter
24 under s. 782.07;

25 c. Aggravated battery or attempted aggravated battery
26 under s. 784.045;

27 d. Sexual battery or attempted sexual battery under s.
28 794.011(2), (3), or (4);

29 e. Lewd or lascivious battery or attempted lewd or
30 lascivious battery under s. 800.04(4) or lewd or lascivious
31 molestation under s. 800.04(5)(b);

1 f. Robbery or attempted robbery under s. 812.13,
2 carjacking under s. 812.133, or home invasion robbery under s.
3 812.135;

4 g. Lewd or lascivious offense upon or in the presence
5 of an elderly or disabled person under s. 825.1025;

6 h. Sexual performance by a child or attempted sexual
7 performance by a child under s. 827.071;

8 i. Computer pornography under s. 847.0135(2) or (3),
9 transmission of child pornography under s. 847.0137, or
10 selling or buying of a minor under s. 847.0145;

11 j. Poisoning food or water under s. 859.01;

12 k. Abuse of a dead human body under s. 872.06;

13 l. Any burglary offense or attempted burglary offense
14 that is a first-degree or second-degree felony, or any
15 attempted burglary offense, under s. 810.02(2) or (3);

16 m. Arson, or attempted arson, under s. 806.01(1);

17 n. Aggravated assault under s. 784.021;

18 o. Aggravated stalking under s. 784.048(3), (4), (5),
19 or (7);

20 p. Airplane piracy under s. 860.16;

21 q. Unlawful throwing, placing, or discharging of a
22 destructive device or bomb under s. 790.161(2), (3), or (4);

23 r. Treason under s. 876.32; or

24 s. Any offense in another jurisdiction which would be
25 an offense described in sub-subparagraphs a.-r. if that
26 offense had been committed in this state.

27 (c) In the case of an alleged violation of probation
28 or community control by a violent felony offender of special
29 concern, other than a failure to pay costs, fines, or
30 restitution, the violent felony offender of special concern
31 shall remain in custody pending the resolution of the

1 violation of probation or community control. The court may not
2 dismiss the violation of probation or community control which
3 is pending against a violent felony offender of special
4 concern without holding a recorded hearing at which the state
5 and the offender are represented.

6 (d) If the court, after conducting the hearing,
7 determines that a violent felony offender of special concern
8 has violated any nonmonetary term of probation or community
9 control, the court must determine whether to revoke the
10 offender's probation or community control.

11 1. If the court determines, by a preponderance of the
12 evidence, that a violent felony offender of special concern
13 poses a danger to the community, the court shall revoke
14 probation or community control and sentence the violent felony
15 offender of special concern as provided under s. 921.0024 up
16 to the statutory maximum.

17 2. In determining the danger to the community posed by
18 the offender's release, the court may consider the nature and
19 circumstances of the violation and any new offenses charged;
20 the offender's past and present conduct, including convictions
21 of crimes; the offender's family ties, length of residence in
22 the community, employment history, and mental condition; the
23 offender's amenability to nonincarcerative sanctions based on
24 his or her history and conduct during the probation or
25 community control supervision from which the violation hearing
26 arises and on any other previous supervisions, including
27 disciplinary records of previous incarcerations; the
28 likelihood that the offender will engage again in a criminal
29 course of conduct; the weight of the evidence against the
30 offender; and any other facts the court considers relevant.

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1 3. The court must enter a written order in support of
2 its findings.

3 Section 4. Paragraph (b) of subsection (1) of section
4 921.0024, Florida Statutes, is amended to read:

5 921.0024 Criminal Punishment Code; worksheet
6 computations; scoresheets.--

7 (1)

8
9 (b) WORKSHEET KEY:

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11 Legal status points are assessed when any form of legal status
12 existed at the time the offender committed an offense before
13 the court for sentencing. Four (4) sentence points are
14 assessed for an offender's legal status.

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16 Community sanction violation points are assessed when a
17 community sanction violation is before the court for
18 sentencing. Six (6) sentence points are assessed for each
19 community sanction violation~~7~~ and each successive community
20 sanction violation unless any of the following apply:7
21 ~~however,7~~

22 1. If the community sanction violation includes a new
23 felony conviction before the sentencing court, twelve (12)
24 community sanction violation points are assessed for ~~the such~~
25 violation, and for each successive community sanction
26 violation involving a new felony conviction.

27 2. If the community sanction violation is committed by
28 a violent felony offender of special concern as defined in s.
29 948.06(8)(b) but does not include a new felony conviction,
30 nine (9) community sanction violation points are assessed for
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1 the violation and for each successive community sanction
2 violation not involving a new felony conviction.

3 3. If the community sanction violation is committed by
4 a violent felony offender of special concern as defined in s.
5 948.06(8)(b) and includes a new felony conviction before the
6 sentencing court, eighteen (18) community sanction violation
7 points are assessed for the violation, and for each successive
8 community sanction violation involving a new felony
9 conviction.

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11 Multiple counts of community sanction violations before the
12 sentencing court shall not be a basis for multiplying the
13 assessment of community sanction violation points.

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15 Prior serious felony points: If the offender has a primary
16 offense or any additional offense ranked in level 8, level 9,
17 or level 10, and one or more prior serious felonies, a single
18 assessment of 30 points shall be added. For purposes of this
19 section, a prior serious felony is an offense in the
20 offender's prior record that is ranked in level 8, level 9, or
21 level 10 under s. 921.0022 or s. 921.0023 and for which the
22 offender is serving a sentence of confinement, supervision, or
23 other sanction or for which the offender's date of release
24 from confinement, supervision, or other sanction, whichever is
25 later, is within 3 years before the date the primary offense
26 or any additional offense was committed.

27
28 Prior capital felony points: If the offender has one or more
29 prior capital felonies in the offender's criminal record,
30 points shall be added to the subtotal sentence points of the
31 offender equal to twice the number of points the offender

1 receives for the primary offense and any additional offense. A
2 prior capital felony in the offender's criminal record is a
3 previous capital felony offense for which the offender has
4 entered a plea of nolo contendere or guilty or has been found
5 guilty; or a felony in another jurisdiction which is a capital
6 felony in that jurisdiction, or would be a capital felony if
7 the offense were committed in this state.

8
9 Possession of a firearm, semiautomatic firearm, or machine
10 gun: If the offender is convicted of committing or attempting
11 to commit any felony other than those enumerated in s.
12 775.087(2) while having in his or her possession: a firearm as
13 defined in s. 790.001(6), an additional 18 sentence points are
14 assessed; or if the offender is convicted of committing or
15 attempting to commit any felony other than those enumerated in
16 s. 775.087(3) while having in his or her possession a
17 semiautomatic firearm as defined in s. 775.087(3) or a machine
18 gun as defined in s. 790.001(9), an additional 25 sentence
19 points are assessed.

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21 Sentencing multipliers:

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23 Drug trafficking: If the primary offense is drug trafficking
24 under s. 893.135, the subtotal sentence points are multiplied,
25 at the discretion of the court, for a level 7 or level 8
26 offense, by 1.5. The state attorney may move the sentencing
27 court to reduce or suspend the sentence of a person convicted
28 of a level 7 or level 8 offense, if the offender provides
29 substantial assistance as described in s. 893.135(4).

1 Law enforcement protection: If the primary offense is a
2 violation of the Law Enforcement Protection Act under s.
3 775.0823(2), the subtotal sentence points are multiplied by
4 2.5. If the primary offense is a violation of s. 775.0823(3),
5 (4), (5), (6), (7), or (8), the subtotal sentence points are
6 multiplied by 2.0. If the primary offense is a violation of s.
7 784.07(3) or s. 775.0875(1), or of the Law Enforcement
8 Protection Act under s. 775.0823(9) or (10), the subtotal
9 sentence points are multiplied by 1.5.

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11 Grand theft of a motor vehicle: If the primary offense is
12 grand theft of the third degree involving a motor vehicle and
13 in the offender's prior record, there are three or more grand
14 thefts of the third degree involving a motor vehicle, the
15 subtotal sentence points are multiplied by 1.5.

16
17 Offense related to a criminal street gang: If the offender is
18 convicted of the primary offense and committed that offense
19 for the purpose of benefiting, promoting, or furthering the
20 interests of a criminal street gang as prohibited under s.
21 874.04, the subtotal sentence points are multiplied by 1.5.

22
23 Domestic violence in the presence of a child: If the offender
24 is convicted of the primary offense and the primary offense is
25 a crime of domestic violence, as defined in s. 741.28, which
26 was committed in the presence of a child under 16 years of age
27 who is a family or household member as defined in s. 741.28(3)
28 with the victim or perpetrator, the subtotal sentence points
29 are multiplied by 1.5.

30 Section 5. For the purpose of incorporating the
31 amendment to section 948.06, Florida Statutes, in a reference

1 thereto, paragraph (b) of subsection (2) of section 948.012,
2 Florida Statutes, is reenacted to read:

3 948.012 Split sentence of probation or community
4 control and imprisonment.--

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

9 (b) If the offender does not meet the terms and
10 conditions of probation or community control, the court may
11 revoke, modify, or continue the probation or community control
12 as provided in s. 948.06. If the probation or community
13 control is revoked, the court may impose any sentence that it
14 could have imposed at the time the offender was placed on
15 probation or community control. The court may not provide
16 credit for time served for any portion of a probation or
17 community control term toward a subsequent term of probation
18 or community control. However, the court may not impose a
19 subsequent term of probation or community control which, when
20 combined with any amount of time served on preceding terms of
21 probation or community control for offenses pending before the
22 court for sentencing, would exceed the maximum penalty
23 allowable as provided in s. 775.082. Such term of
24 incarceration shall be served under applicable law or county
25 ordinance governing service of sentences in state or county
26 jurisdiction. This paragraph does not prohibit any other
27 sanction provided by law.

28 Section 6. For the purpose of incorporating the
29 amendment to section 948.06, Florida Statutes, in a reference
30 thereto, subsection (9) of section 948.10, Florida Statutes,
31 is reenacted to read:

1 948.10 Community control programs.--

2 (9) Procedures governing violations of community
3 control shall be the same as those described in s. 948.06 with
4 respect to probation.

5 Section 7. For the purpose of incorporating the
6 amendment to section 948.06, Florida Statutes, in a reference
7 thereto, section 958.14, Florida Statutes, is reenacted to
8 read:

9 958.14 Violation of probation or community control
10 program.--A violation or alleged violation of probation or the
11 terms of a community control program shall subject the
12 youthful offender to the provisions of s. 948.06. However, no
13 youthful offender shall be committed to the custody of the
14 department for a substantive violation for a period longer
15 than the maximum sentence for the offense for which he or she
16 was found guilty, with credit for time served while
17 incarcerated, or for a technical or nonsubstantive violation
18 for a period longer than 6 years or for a period longer than
19 the maximum sentence for the offense for which he or she was
20 found guilty, whichever is less, with credit for time served
21 while incarcerated.

22 Section 8. This act shall take effect July 1, 2007.
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SENATE SUMMARY

Denies bail or any form of pretrial release to violent felony offenders of special concern under certain circumstances. Requires that a violent felony offender of special concern remain in custody pending the hearing on the probation or community control violation. Provides for hearings to determine the nature and probability of any danger that violent felony offenders of special concern pose to the community before release of a violator following violations of probation or community control. Provides criteria to determine the danger posed by a violent felony offender of special concern. Revises the Criminal Punishment Code to provide additional points for a community sanction violation when a community sanction violation is committed by a violent felony offender of special concern.

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