

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 29 Violent Felony Offenders
SPONSOR(S): Safety & Security Council; Adams and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Safety & Security Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Cunningham</u>	<u>Havlicak</u>
2) <u>Policy & Budget Council</u>	<u>27 Y, 0 N</u>	<u>Leznoff</u>	<u>Hansen</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Florida Criminal Punishment Code is the state's primary sentencing policy for felony offenders. The code is a scoring mechanism that assesses point values for offenses for which the offender is to be sentenced, prior record, victim injury and other factors, including whether the offender is being sentenced as a result of a violation of a probation or community control. The offender's score determines the lowest permissible sentence that can be imposed by the court, absent a departure from the code.

This bill creates a class of persons known as a "violent felony offender of special concern" who are individuals who are either on probation for committing certain qualifying offenses, or who violate probation by committing certain qualifying offenses. These offenders are subject to additional points under the Criminal Punishment Code. Under current law, a probation or community control violator is assessed an additional 12 points for a new felony violation, and 6 points for any other violation under the code. This bill increases those points so that violent felony offenders of special concern who violate probation are assessed an additional 24 points for a new felony violation, and 12 points for other violations.

Also, the bill provides that "violent felony offenders of special concern" and certain other probationers who are arrested for violating the terms of their probation may not be granted bail unless the violation is based solely on the offender's failure to pay certain costs. The bill requires courts to hold a recorded violation hearing.

If the court determines that a violent felony offender of special concern committed a violation, the court must make a written finding as to whether the offender poses a danger to the community. If so, the court must revoke the offender's probation. If the court finds that the offender is not a danger to the community, the court may revoke, modify, or continue the offender's probation.

This bill requires the Department of Corrections, counties, and the state attorney to provide certain information to the courts that will assist the courts in identifying certain offenders, including violent felony offenders of special concern.

The bill directs the Department of Corrections, in conjunction with other specified entities, to coordinate preparation of a report, by February 1, 2008, that identifies problems related to the implementation of the act.

The Criminal Justice Impact Conference determined that the bill would increase the inmate population by 2,505 inmates by the end of FY 2011-12. The DOC estimates first year prison fixed capital and operational costs to be \$21,981,484 and cumulative costs through FY 2009-10 to equal \$162,924,289. They also foresee the need for additional Community Corrections resources of \$497, 898 in the first year to a total of \$2,449,064 by FY 2011-12.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Personal responsibility -- This bill encourages responsible behavior by exposing specified violators of probation or community control to greater sentence lengths than are provided under the current point structure of the Criminal Punishment Code.

B. EFFECT OF PROPOSED CHANGES:

Probation is a form of community supervision requiring specified contacts with parole and probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.¹ Community control is 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 non-institutional residential placement and specific sanctions are imposed and enforced.²

Offenders on probation and community control must comply with the statutory terms and conditions set forth in s. 948.03, F.S.³ These terms and conditions require probationers and community controllees to:

- 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 as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment 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, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

¹ Section 948.001(5), F.S.

² Section 948.001(2), F.S.

³ See ss. 948.03 and 948.101, F.S.

In addition to complying with the above terms and conditions, offenders on community control are subject to intensive supervision and surveillance, which may include but is not limited to:

- Specified contact with the parole and probation officer.
- Confinement to an agreed-upon residence during hours away from employment and public service activities.
- Mandatory public service.
- Supervision by the Department of Corrections by means of an electronic monitoring device or system.

Section 948.06, F.S., provides procedures regarding violation of the terms and conditions required of a person on probation or community control. Upon violation, the offender is arrested and brought before the sentencing court. At the first hearing on the violation, the offender is advised of the charge. If the offender admits the charge, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If the offender denies having violated the terms of the probation or community control, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. Unless dismissed, the court must conduct a hearing and determine whether the offender has violated. If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If probation or community control is revoked, the court must adjudicate the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed for the offense for which the offender was placed on probation or into community control.

The Criminal Punishment Code, ss. 921.002 through 921.0027, F.S., is applicable to all non capital, 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%. The resulting number is the minimum number of months in state prison that the offender must serve. However, the court may find that one of the mitigating circumstances specified in s. 921.0026, F.S., warrants a downward departure. Where a downward departure is granted, the court may sentence the offender to less than the minimum sentence required by the code.

If an offender is sentenced 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 effect of the additional points may compel the sentencing court to impose a new state prison sentence, unless the court finds grounds for a downward departure.

Effect of Bill

This bill creates the "Anti-Murder Act".

This bill creates s. 903.0351, F.S., which provides that the following offenders arrested for violation of probation or community control may not be granted bail prior to the resolution of the probation or community control violation hearing unless the violation is based solely on a failure to pay costs, fines, or restitution payments:

- Violent felony offenders of special concern.
- Persons who are on felony probation or community control for any offense committed on or after the effective date of the bill and who are arrested for a qualifying offense.

- Persons on felony probation or community control who have previously been found by a court to be a habitual violent felony offender, three-time violent felony offender, or a sexual predator, and who are arrested for committing a qualifying offense on or after the effective date of this act.

A corresponding change is made to s. 948.06(4), F.S., regarding the above-listed offenders who are captured in a county other than the sentencing county.

This bill creates a new subsection (8) to s. 948.06, F.S., relating to violent felony offenders of special concern. The bill defines a “violent felony offender of special concern” as a person who is:

- On felony probation or community control related to the commission of a qualifying offense committed on or after the effective date of the act,
- On felony probation or community control for any offense committed on or after the effective date of the act, and has previously been convicted of a qualifying offense,
- On felony probation or community control for any offense committed on or after the effective date of the act, and is found to have violated that probation or community control by committing a qualifying offense.
- On felony probation or community control and has previously been found by a court to be a habitual violent felony offender pursuant to s. 775.084(1)(b) and has committed a qualifying offense on or after the effective date of the act.
- On felony probation or community control and has previously been found by a court to be a three-time violent felony offender pursuant to s. 775.084(1)(c) and has committed a qualifying offense on or after the effective date of the act.
- On felony probation or community control and has previously been found by a court to be a sexual predator pursuant to s. 775.21 and has committed a qualifying offense on or after the effective date of the act.

This bill defines a “qualifying offense” as:

- Kidnapping or attempted kidnapping under s. 787.01, 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.
- Sexual battery or attempted sexual battery under s. 794.011(2), (3), or (4), or (8)(b) or (c), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious batter under s. 800.04(4), F.S., or 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 of a child or attempted sexual performance of 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.
- Any burglary offense or attempted burglary offense that is either a first or second degree felony 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.
- An offense in another jurisdiction that would meet the definitions of these offenses if committed in Florida.

The bill provides that the following individuals must remain in custody pending the resolution of a probation or community control violation:

- Violent felony offenders of special concern.
- Persons who are on felony probation or community control for any offense committed on or after the effective date of the bill and who are arrested for a qualifying offense.
- Persons on felony probation or community control who have previously been found by a court to be a habitual violent felony offender, three-time violent felony offender, or a sexual predator, and who are arrested for committing a qualifying offense on or after the effective date of this act.

Additionally, the court may not dismiss a probation or community control violation warrant pending against one of the above-listed offenders without holding a recorded violation hearing at which both the state and the offender are represented.

If the court finds that a violent felony offender of special concern has committed a violation of probation, other than a failure to pay certain costs, the court must:

- Make a written finding, using a variety of factors, as to whether the violent felony offender of special concern poses a danger to the community; and
- Decide whether to revoke the probation or community control.

If the court determines that a violent felony offender of special concern poses a danger to the community, the court must revoke probation or community control and sentence the offender up to the statutory maximum, or longer if permitted by law. If the court determines that a violent felony offender of special concern does not pose a danger to the community, the court may revoke, modify, or continue the offender's probation or community control, or may place the offender in community control.

This bill amends the Criminal Punishment Code, s. 921.0024, F.S., to provide additional points for community sanction violations committed by violent felony offenders of special concern. Specifically, the bill requires that a violent felony offender of special concern violator be assessed 12 points for a violation that does not involve a new felony conviction (as opposed to the 6 points assessed under current law), and be assessed 24 points for a violation that involves a new felony conviction (as opposed to the 12 points assessed under current law). These additional points will have the effect of lengthening the minimum sentence required by the Criminal Punishment Code.

This bill requires the Department of Corrections, counties, and the state attorney to provide certain information to the courts that will assist the courts in identifying certain offenders, including violent felony offenders of special concern.

This bill requires the Department of Corrections, in cooperation with other entities, to coordinate preparation of a report that identifies problems related to the implementation of the act. This report must be submitted to the Governor, President of the Senate, and the Speaker of the House of Representatives.

The bill provides a severability clause.

C. SECTION DIRECTORY:

Section 1. Names the act.

Section 2. Creates s. 903.0351, F.S., denying bail for certain offenders.

Section 3. Amends s. 948.06, F.S., defining violent felony offender of special concern and requiring a violation of probation hearing.

Section 4. Creates s. 948.064, F.S., establishing responsibilities for notifying the court of an offender's status as a violent felony offender of special concern.

Section 5. Amends s. 921 .0024, F.S., to increase points for community sanction violations.

Sections 6, 7 and 8. Republishes statutes that may be affected by the changes made in the bill.

Section 9. Requires a report on the implementation of the act.

Section 10. Provides a severability clause.

Section 11. This bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Governor's Office of Policy and Budget produced the following estimated General Revenue impact for new prison bed construction and operations pursuant to the provisions of CS/HB 29:

Fiscal Year	Amount
2007-2008	\$ 21,981,484
2008-2009	\$ 89,116,620
2009-2010	\$ 51,826,185
Total	\$ 162,924,289

The Office of the State Court Administrator's (OSCA) indicates that one additional FTE and resources are needed for the re-engineering of the Judicial Inquiry System (JIS) to assist with the early identification of the "flagging" of the "violent felony offender of special concern."

Below is a recap of the fiscal impact to CS/HB 29:

	Fiscal Year			
	2007-2008	2008-2009	2009-2010	Total
Recurring:				
DOC operational Cost	1,831,484	9,445,620	24,036,185	35,313,289
OSCA (includes salaries & benefits, expenses, etc)	90,962	90,962	90,962	272,886
Non-recurring				
FCO: Cost to Construct	20,150,000	79,671,000	27,790,000	127,611,000
OSCA (Data Processing, Software and JIS)	221,526			221,526
Total	22,293,972	89,207,582	51,917,147	163,418,701

Additionally, the Department of Corrections notes a potential impact to the Office of Community Corrections as the bill may result in the courts requesting additional information in order to determine if violent offenders of special concern pose a danger to the community. Estimated costs are \$497, 898 and 7 FTE in the first year to a total of \$2,449,064 and 35 FTE by FY 2011-12.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There could be increased utilization of county jail beds because of provisions that require the offender to be held in custody pending final disposition by the courts. The incremental impact of CS/HB 29 is indeterminate since data are not available to indicate the number of these offenders that are held in local jails under existing law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference (CJIC) met on February 16, 2007 and produced the prison bed impacts for both HB 29 and CS/SB 146. HB 29 was amended to mirror CS/SB 146. Therefore, the following prison bed impact from CJIC reflects CS/HB 29 as amended:

Number of Prison Beds Needed		
Fiscal Year	Projected Additional Annual Prison Beds	Projected Cumulative Prison Beds
2007-2008	48	48
2008-2009	372	420
2009-2010	702	1,122
2010-2011	737	1,859
2011-2012	646	2,505
Total	2,505	2,505

The courts indicate that passage of the bill may generate the need for additional judges. Any such impact can be accounted for in the court's annual judicial certification order requesting new judgeships.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Subparagraph 3. (lines 113 – 116) defines a “violent felony offender of special concern” as a person who is on probation or community control for any offense committed on or after July 1, 2007, *and is found to have violated that probation or community control by committing a qualifying offense*. Thus, one element of this definition requires a *judge* to determine that the probationer violated their probation by committing a qualifying offense.

In contrast, lines 117 – 127 define a “violent felony offender of special concern” as a person who is on probation or community control who has previously been found by a court to be a habitual violent felony offender (subparagraph 4.), three-time violent felony offender (subparagraph 5.), or sexual predator (subparagraph 6.), and who has *committed a qualifying offense on or after July 1, 2007*. As written, a probationer who also happens to be a habitual violent felony offender need only *commit* a qualifying offense to fall within the definition of a “violent felony offender of special concern.” This raises the following issues:

- i. How would authorities know that such a probationer *committed* a qualifying offense?
- ii. Who determines whether such a probationer *committed* a qualifying offense?

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following comment regarding the bill as originally filed:

The bill is carefully crafted to target only the most serious offenders. The bill creates a new class of criminals called violent felony offenders of special concern. These individuals are the worst of the worst. They have committed sex crimes and serious crimes of violence and are on probation. Those who break the rules, thus squandering the extraordinary opportunity given them, will receive special attention from our justice system. This bill helps protect the citizens of our state.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES