

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL 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: The Professional Staff of the Committee on Judiciary

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BILL: SB 1242

INTRODUCER: Senator Simmons

SUBJECT: No Contact Orders

DATE: March 17, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	<b>Pre-meeting</b>
2.			CJ	
3.			RC	

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**I. Summary:**

SB 1242 stipulates conditions that a court must include in a no contact order.

When a person is detained and charged with a crime, the accused is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One of the conditions is that the defendant have no contact with the victim. This bill stipulates that if the court issues an order of no contact, the order is effective immediately and enforceable until the case is over or the court modifies the order.

The bill also requires the court to include specific prohibited acts in the order of no contact.

Prohibited acts include:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of violence against the victim;
- Intentionally making any unlawful threat, word, or act to do violence to the victim;
- Communicating with the victim directly or indirectly unless the order permits indirect contact;
- Intentionally coming within 100 feet of the victim's vehicle;
- Defacing or destroying the victim's personal property, including a motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

## II. Present Situation:

The Florida Constitution provides a presumption in favor of release for a defendant charged with a crime and detained pending resolution of the charge.<sup>1</sup> Section 14, Article I of the Florida Constitution provides, in part:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime ... shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm ... , assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

The pretrial release provision in Florida Rule of Criminal Procedure 3.131 contains language identical to that of the state constitution.<sup>2</sup>

The terms “bail” and “bond” indicate any and all forms of pretrial release.<sup>3</sup>

Florida law stipulates guidelines for a court to use in ordering bail or detention and imposing reasonable conditions of pretrial release.<sup>4</sup>

The court has two purposes in setting bail of a defendant in a criminal case:

- Ensuring the appearance of the criminal defendant in court; and
- Protecting the community from unreasonable danger.<sup>5</sup>

In determining pretrial release, a court must consider:

- The nature and circumstances of the offense charged;
- The weight of evidence against the defendant;
- The defendant’s family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant’s past and present conduct, including convictions, previous flight to avoid prosecution, or failure to appear in court;
- The nature and probability of danger from release into the community;
- The source of funds used to post bail;
- Whether the defendant is already on release for another criminal charge or on probation, parole, or other release pending completion of a sentence;
- The street value of any drug or controlled substance connected to the criminal charge;
- The nature and probability of intimidation and danger to victims;
- Whether probable cause exists that the defendant committed a new crime while on pretrial release;
- Any other facts that the court considers relevant;

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<sup>1</sup> Section 14, Art. 1, Florida Constitution.

<sup>2</sup> Fla. R. Crim. P. 3.131(a)

<sup>3</sup> Section 903.011(1), F.S.

<sup>4</sup> Section 903.046, F.S.; *State v. Blair*, 39 So.3d 1190, 1192 (Fla. 2010).

<sup>5</sup> Section 903.046(1), F.S.

- Whether the crime charged is gang-related or alleged to be subject to enhanced punishment due to gang involvement under ch. 874, F.S.; and
- Whether the defendant is required to register as a sexual offender or predator.<sup>6</sup>

The court must impose, at minimum, statutory conditions of pretrial release. These conditions are that the defendant:

- Refrain from criminal activity of any kind;
- Refrain from any contact of any type with the victim, except through pretrial discovery; and
- Comply with all conditions of pretrial release.<sup>7</sup>

Section 741.31, F.S., imposes a first degree misdemeanor on a person who violates an injunction for protection against domestic violence. A court will consider a person to have violated a protective injunction if they commit any of the following:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of domestic violence against the victim;
- Intentionally making an unlawful threat, word, or act to do violence to the victim;
- Phoning, contacting, or otherwise communicating with the victim directly or indirectly unless the order permits indirect contact;
- Knowingly and intentionally coming within 100 feet of the victim's vehicle, whether or not the vehicle is occupied;
- Defacing or destroying the victim's personal property, including a motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.<sup>8</sup>

### III. Effect of Proposed Changes:

When a person is detained and charged with a crime, the accused is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One of the conditions is that the defendant have no contact with the victim. This bill stipulates that when the court issues an order requiring a defendant to have no contact with the victim, the order is effective immediately and enforceable until the case concludes or the court modifies the order. In providing for immediate effect, it is unclear whether an order is effective immediately upon release, or immediately upon a court issuing an order, as these conditions are conditions that take place upon pretrial release from incarceration.

The bill also requires the court to include specific prohibited acts in the order of no contact. These acts are the same prohibited acts that constitute a violation of a protective injunction against domestic violence. These acts are:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of violence against the victim;

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<sup>6</sup> Section 903.046(2), F.S.

<sup>7</sup> Section 903.047(1), F.S.

<sup>8</sup> Section 741.31(4)(a), F.S.

- Intentionally making an unlawful threat, word, or act to do violence to the victim;
- Phoning, contacting, or otherwise communicating with the victim directly or indirectly unless the order permits indirect contact;
- Knowingly and intentionally coming within 100 feet of the victim's vehicle, whether or not the vehicle is occupied;
- Defacing or destroying the victim's personal property, including a motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

The court has authority to impose additional conditions of pretrial release in an order of no contact.

The bill takes effect October 1, 2014.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of State Courts Administrator indicates that the fiscal impact of the bill cannot be accurately determined at this time. However, the OSCA expects to absorb any impact with existing resources.<sup>9</sup>

#### **VI. Technical Deficiencies:**

None.

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<sup>9</sup> Office of the State Courts Administrator, *2014 Judicial Impact Statement, SB 1242* (March 13, 2014); on file with the Senate Judiciary Committee.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 903.047 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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