

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1412

INTRODUCER: Senator Simmons

SUBJECT: Conditions of Pretrial Release

DATE: February 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1412 clarifies that courts have the discretion to issue an order of no contact to a person on pretrial release. An order of no contact generally prohibits a defendant from being near or communicating with a victim. Existing law could be read to require a court to issue an order of no contact to every person who is released on pretrial release if there is a victim in the case.

II. Present Situation:

Conditions of Pretrial Release

Section 903.047, F.S., governs the conditions of pretrial release. The conditions include refraining from criminal activity, refraining from contact with the victim, and complying with any other condition imposed.¹ The requirement that a defendant refrain from contact with the victim is implemented through a no contact order. This order includes prohibitions on communicating with the victim, having physical or violent contact with the victim or other named person or his or her property, being within 500 feet of the victim's residence, or being within 500 feet of the victim's place of employment.²

A person who fails to comply with the conditions of pretrial release, if the original arrest was for an act of domestic violence, commits a first degree misdemeanor.³ The statute currently requires that the defendant receive a copy of the order of no contact before he or she is released from custody on pretrial release. The order is effective immediately upon issuance and enforceable for the duration of the pretrial release or until modified by the court.

¹ Section 903.047, F.S.

² Section 903.047(1)(b), F.S.

³ Section 741.29(6), F.S.

2015 No Contact Legislation

Most of the current language of s. 903.047(1)(b), F.S., was enacted through the passage of SB 342 during the 2015 Legislative Session. The 2015 language is italicized below:

903.047 Conditions of pretrial release.—

(1) As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant *must*:

(a) Refrain from criminal activity of any kind.

(b) Refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure. *An order of no contact is effective immediately and enforceable for the duration of the pretrial release or until it is modified by the court. The defendant shall receive a copy of the order of no contact which specifies the applicable prohibited acts before the defendant is released from custody on pretrial release. As used in this section, unless otherwise specified by the court, the term “no contact” includes the following prohibited acts:*

1. *Communicating orally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with the victim or any other person named in the order. ...*
2. *Having physical or violent contact with the victim or other named person or his or her property.*
3. *Being within 500 feet of the victim’s or other named person’s residence, even if the defendant and the victim or other named person share the residence.*
4. *Being within 500 feet of the victim’s or other named person’s vehicle, place of employment, or a specified place frequented regularly by such person.*

The 2015 bill analysis indicates that the intent of SB 342 was to define the basic restrictions imposed on a defendant through a no contact order.⁴ The analysis also states the requirement that the order be “effective immediately” was intended to prevent a detainee from making harassing phone calls to a victim while in jail awaiting a pretrial release.

There is no mention in the bill analysis that the bill created statutorily-*mandated* court orders. However, it is *possible* to read existing law as *requiring* a court to enter an order of no contact for all cases for which there is a victim and to serve the defendant with the order before release from jail.

No Contact Condition of Release Case Law – Notice to Defendant Required

In *Pilgore v. State*, the District Court of Appeal held that evidence was insufficient to establish that the defendant was informed of the no contact condition of his pretrial release.⁵ Pilgore had been arrested for beating his wife and was released on bond with the condition of having no contact with the victim pursuant to s. 903.047, F.S.⁶ Subsequently, Pilgore made contact with the

⁴ CS/CS/CS/SB 342, Bill Analysis and Fiscal Impact Statement on No Contact Orders (2015).

⁵ *Pilgore v. State*, 876 So. 2d 591 (Fla. 5th DCA 2004).

⁶ *Id.* at 591-92.

victim and was charged with violation of a condition of pretrial release pursuant to s. 741.29, F.S.⁷

The *Pilgore* court found the statute requires the imposition of the no contact condition to be proven by substantial competent evidence in order to convict the person of the crime.⁸ The statute requires the court to impose the no contact condition on a person charged with domestic violence, but it does not create a presumption the defendant knows that he or she is to have no contact.⁹

In 2008, the Fifth DCA again held that the state had the burden to prove the defendant received adequate notice of his pretrial no contact condition. In *Sheppard v. State*, the court stated “the state has the burden of proving, by substantial, competent evidence, that the condition was imposed on a defendant charged with domestic violence.”¹⁰ The court went on to quote its decision in *Pilgore* to state there is no presumption that the defendant knows that he or she is to have no contact.¹¹

Therefore, in order to be convicted of violating a no contact order by a person who was arrested for domestic violence, the state must prove by substantial competent evidence the defendant received constructive notice of the no contact condition laid out in s. 903.047, F.S. It cannot be presumed the defendant is on notice of the no contact condition.

III. Effect of Proposed Changes:

This bill clarifies that courts have the *discretion* to issue an order of no contact to a person on pretrial release. An order of no contact generally prohibits a defendant from being near or communicating with a victim. It is possible that existing law could be read to *require* a court to issue an order of no contact to every person who is released on pretrial release if there is a victim in the case.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ *Id.* at 592.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Sheppard v. State*, 974 So. 2d 529, 530 (Fla. 5th DCA 2008).

¹¹ *Id.* at 530.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may result in a reduction in judicial workloads if it reduces the number of no contact orders issued.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends 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.