



1           (1)(a) The purpose of a bail determination in criminal  
2 proceedings is to ensure the appearance of the criminal  
3 defendant at subsequent proceedings and to protect the  
4 community against unreasonable danger from the criminal  
5 defendant.

6           (b) Notwithstanding the provisions of s. 907.041, if  
7 the defendant is brought before the court for a bail hearing,  
8 and the court finds, during the course of such bail hearing,  
9 that no conditions of release can reasonably protect the  
10 community from risk of physical harm to persons, assure the  
11 presence of the accused at trial, or assure the integrity of  
12 the judicial process, the court may thereupon order the  
13 defendant detained, and a motion for pretrial detention is not  
14 required.

15           (2) When determining whether to release a defendant on  
16 bail or other conditions, and what that bail or those  
17 conditions may be, the court shall consider:

18           (a) The nature and circumstances of the offense  
19 charged.

20           (b) The weight of the evidence against the defendant.

21           (c) The defendant's family ties, length of residence  
22 in the community, employment history, financial resources, and  
23 mental condition.

24           (d) The defendant's past and present conduct,  
25 including any record of convictions, previous flight to avoid  
26 prosecution, or failure to appear at court proceedings.  
27 However, any defendant who previously had willfully and  
28 knowingly failed to appear and breached a bond as specified in  
29 s. 903.26, but who had voluntarily appeared or surrendered,  
30 shall not be eligible for a recognizance bond; and any  
31 defendant who willfully and knowingly failed to appear and

1 breached a bond as specified in s. 903.26 and who was arrested  
2 at any time following forfeiture shall not be eligible for a  
3 recognizance bond or for any form of bond which does not  
4 require a monetary undertaking or commitment equal to or  
5 greater than \$2,000 or twice the value of the monetary  
6 commitment or undertaking of the original bond, whichever is  
7 greater.

8 (e) The nature and probability of danger which the  
9 defendant's release poses to the community.

10 (f) The source of funds used to post bail.

11 (g) Whether the defendant is already on release  
12 pending resolution of another criminal proceeding or on  
13 probation, parole, or other release pending completion of a  
14 sentence.

15 (h) The street value of any drug or controlled  
16 substance connected to or involved in the criminal charge. It  
17 is the finding and intent of the Legislature that crimes  
18 involving drugs and other controlled substances are of serious  
19 social concern, that the flight of defendants to avoid  
20 prosecution is of similar serious social concern, and that  
21 frequently such defendants are able to post monetary bail  
22 using the proceeds of their unlawful enterprises to defeat the  
23 social utility of pretrial bail. Therefore, the courts should  
24 carefully consider the utility and necessity of substantial  
25 bail in relation to the street value of the drugs or  
26 controlled substances involved.

27 (i) The nature and probability of intimidation and  
28 danger to victims.

29 (j) Any other facts that the court considers relevant.

30 Section 2. Subsection (4) of section 907.041, Florida  
31 Statutes, is amended to read:

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- 1           907.041 Pretrial detention and release.--  
2           (4) PRETRIAL DETENTION.--  
3           (a) As used in this subsection, "dangerous crime"  
4 means any of the following:  
5           1. Arson;  
6           2. Aggravated assault;  
7           3. Aggravated battery;  
8           4. Illegal use of explosives;  
9           5. Child abuse or aggravated child abuse;  
10          6. Abuse of an elderly person or disabled adult, or  
11 aggravated abuse of an elderly person or disabled adult;  
12          7. Hijacking;  
13          8. Kidnapping;  
14          9. Homicide;  
15          10. Manslaughter;  
16          11. Sexual battery;  
17          12. Robbery;  
18          13. Carjacking;  
19          14. Lewd, lascivious, or indecent assault or act upon  
20 or in presence of a child under the age of 16 years;  
21          15. Sexual activity with a child, who is 12 years of  
22 age or older but less than 18 years of age, by or at  
23 solicitation of person in familial or custodial authority;  
24          16. Burglary of a dwelling;  
25          17. Stalking and aggravated stalking;  
26          18. Act of domestic violence as defined in s. 741.28;  
27 and  
28          19. Attempting or conspiring to commit any such crime;  
29 and home-invasion robbery.  
30          (b) The court may order pretrial detention if it finds  
31 a substantial probability, based on a defendant's past and

1 present patterns of behavior, the criteria in s. 903.046, and  
2 any other relevant facts, that any of the following  
3 circumstances exists:

4 1. The defendant has previously violated conditions of  
5 release and that no further conditions of release are  
6 reasonably likely to assure the defendant's appearance at  
7 subsequent proceedings or assure the integrity of the judicial  
8 process.†

9 2. The defendant, with the intent to obstruct the  
10 judicial process, has threatened, intimidated, or injured any  
11 victim, potential witness, juror, or judicial officer, or has  
12 attempted or conspired to do so, and that no condition of  
13 release will reasonably prevent the obstruction of the  
14 judicial process.†

15 3. The defendant is charged with trafficking in  
16 controlled substances as defined by s. 893.135, that there is  
17 a substantial probability that the defendant has committed the  
18 offense, and that no conditions of release will reasonably  
19 assure the defendant's appearance at subsequent criminal  
20 proceedings.†~~or~~

21 4. The defendant poses the threat of harm to the  
22 community. The court may so conclude if it finds that the  
23 defendant is presently charged with a dangerous crime, that  
24 there is a substantial probability that the defendant  
25 committed such crime, that the factual circumstances of the  
26 crime indicate a disregard for the safety of the community,  
27 and that there are no conditions of release reasonably  
28 sufficient to protect the community from the risk of physical  
29 harm to persons. ~~In addition, the court must find that at~~  
30 ~~least one of the following conditions is present:~~

31

1           a. ~~The defendant has previously been convicted of a~~  
2 ~~crime punishable by death or life imprisonment.~~

3           b. ~~The defendant has been convicted of a dangerous~~  
4 ~~crime within the 10 years immediately preceding the date of~~  
5 ~~his or her arrest for the crime presently charged.~~

6           5.c. The defendant was ~~is~~ on probation, parole, or  
7 other release pending completion of sentence or on pretrial  
8 release for a dangerous crime at the time of the current  
9 offense was committed ~~arrest.~~

10           6. The defendant has violated one or more conditions  
11 of pretrial release or bond for the offense currently before  
12 the court which, in the discretion of the court, support a  
13 finding that no conditions of release can reasonably protect  
14 the community from risk of physical harm to persons, assure  
15 the presence of the accused at trial, or assure the integrity  
16 of the judicial process.

17           (c) When a person charged with a crime for which  
18 pretrial detention could be ordered is arrested, the arresting  
19 agency shall promptly notify the state attorney of the arrest  
20 and shall provide the state attorney with such information as  
21 the arresting agency has obtained relative to:

22           1. The nature and circumstances of the offense  
23 charged;

24           2. The nature of any physical evidence seized and the  
25 contents of any statements obtained from the defendant or any  
26 witness;

27           3. The defendant's family ties, residence, employment,  
28 financial condition, and mental condition; and

29           4. The defendant's past conduct and present conduct,  
30 including any record of convictions, previous flight to avoid  
31 prosecution, or failure to appear at court proceedings.

1 (d) When a person charged with a crime for which  
2 pretrial detention could be ordered is arrested, the arresting  
3 agency may detain such defendant, prior to the filing by the  
4 state attorney of a motion seeking pretrial detention, for a  
5 period not to exceed 24 hours.

6 ~~The court shall order detention only after a~~  
7 ~~pretrial detention hearing.~~ The pretrial detention hearing  
8 shall be held within 5 days of the filing by the state  
9 attorney of a complaint to seek pretrial detention. The  
10 defendant may request a continuance. No continuance shall be  
11 for longer than 5 days unless there are extenuating  
12 circumstances. The defendant may be detained pending the  
13 hearing. The state attorney shall be entitled to one  
14 continuance for good cause.

15 (f) The state attorney has the burden of showing the  
16 need for pretrial detention by a preponderance of the  
17 evidence.

18 (g) The defendant is entitled to be represented by  
19 counsel, to present witnesses and evidence, and to  
20 cross-examine witnesses. The court may admit relevant  
21 evidence without complying with the rules of evidence, but  
22 evidence secured in violation of the United States  
23 Constitution or the Constitution of the State of Florida shall  
24 not be admissible. No testimony by the defendant shall be  
25 admissible to prove guilt at any other judicial proceeding,  
26 but such testimony may be admitted in an action for perjury,  
27 based upon the defendant's statements made at the pretrial  
28 detention hearing, or for impeachment.

29 (h) The pretrial detention order of the court shall be  
30 based solely upon evidence produced at the hearing and shall  
31 contain findings of fact and conclusions of law to support it.

1 The order shall be made either in writing or orally on the  
2 record. The court shall render its findings within 24 hours of  
3 the pretrial detention hearing.

4 ~~(i) If ordered detained pending trial pursuant to~~  
5 ~~subparagraph (b)4., the defendant may not be held for more~~  
6 ~~than 90 days. Failure of the state to bring the defendant to~~  
7 ~~trial within that time shall result in the defendant's release~~  
8 ~~from detention, subject to any conditions of release, unless~~  
9 ~~the trial delay was requested or caused by the defendant or~~  
10 ~~his or her counsel.~~

11 (j)~~(i)~~ A defendant convicted at trial following the  
12 issuance of a pretrial detention order shall have credited to  
13 his or her sentence, if imprisonment is imposed, the time the  
14 defendant was held under the order, pursuant to s. 921.161.

15 (k)~~(j)~~ The defendant shall be entitled to dissolution  
16 of the pretrial detention order whenever the court finds that  
17 a subsequent event has eliminated the basis for detention.

18 (k) Nothing in this section shall be construed to  
19 require the filing of a motion for pretrial detention as a  
20 condition precedent to detaining the defendant if the  
21 defendant is brought before the court for a bail hearing, and  
22 the court finds, during the course of such bail hearing, that  
23 no conditions of release can reasonably protect the community  
24 from risk of physical harm to persons, assure the presence of  
25 the accused at trial, or assure the integrity of the judicial  
26 process.

27 Section 3. Rules 3.131 and 3.132, Florida Rules of  
28 Criminal Procedure, are hereby repealed to the extent that  
29 they are inconsistent with this act.

30 Section 4. This act shall take effect upon becoming a  
31 law, except that section 3 shall take effect only if this act

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1 is passed by the affirmative vote of two-thirds of the  
2 membership of each house of the Legislature.

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HOUSE SUMMARY

Provides that a court may detain a defendant after a bail hearing without separate hearing or motion for pretrial detention if the court finds that no conditions of release can protect the community from harm, assure the defendant's presence at trial, or assure the integrity of the judicial process. Revises criteria for pretrial detention. Removes requirement for additional court findings for pretrial detention. Specifies that the need for pretrial detention must be shown by a preponderance of the evidence. Removes limitation upon detention period when detention is based on threat of harm to the community. Repeals Rules 3.131 and 3.132, Florida Rules of Criminal Procedure, relating to pretrial release and pretrial detention, to the extent that they are inconsistent with the act.