

By Representative Tamargo

1 A bill to be entitled
2 An act relating to pretrial detention; amending
3 s. 903.046, F.S.; providing that a court may
4 detain a defendant after bail hearing without
5 motion for pretrial detention if no conditions
6 of release can protect the community from harm
7 or assure the defendant's presence at trial or
8 the integrity of the judicial process; amending
9 s. 907.041, F.S.; revising criteria for
10 pretrial detention; deleting requirement for
11 additional court findings for pretrial
12 detention; specifying that the need for
13 pretrial detention must be shown by a
14 preponderance of the evidence; deleting
15 limitation upon detention period when detention
16 is based on threat of harm to the community;
17 authorizing a court to detain a defendant after
18 bail hearing without separate hearing or motion
19 for pretrial detention; repealing Rules 3.131
20 and 3.132, Florida Rules of Criminal Procedure,
21 relating to pretrial release and pretrial
22 detention, to the extent of inconsistency with
23 the act; providing an effective date.
24

25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Section 903.046, Florida Statutes, is
28 amended to read:

29 903.046 Purpose of and criteria for bail
30 determination.--
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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:

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:~~

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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 (e) ~~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 (i)(j) 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 (j)(k) 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

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

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5 HOUSE SUMMARY

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

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