

By the Committee on Crime & Punishment and Representative  
 Tamargo

1                                   A bill to be entitled  
 2           An act relating to pretrial detention; amending  
 3           s. 907.041, F.S.; revising criteria for  
 4           pretrial detention; deleting requirement for  
 5           additional court findings for pretrial  
 6           detention; permitting pretrial detention for  
 7           any violation of conditions of pretrial release  
 8           or bond which, in the discretion of the court,  
 9           supports a finding that no condition of release  
 10          can reasonably protect the community from  
 11          physical harm, assure the presence of the  
 12          accused at trial, or assure the integrity of  
 13          the judicial process; deleting limitation upon  
 14          detention period when detention is based on  
 15          threat of harm to the community; authorizing a  
 16          court to detain a defendant at a bail hearing  
 17          without separate hearing or motion for pretrial  
 18          detention; authorizing the state to orally move  
 19          for pretrial detention anytime the defendant is  
 20          before the court for a bail hearing; providing  
 21          for construction; repealing Rules 3.131 and  
 22          3.132, Florida Rules of Criminal Procedure,  
 23          relating to pretrial release and pretrial  
 24          detention, to the extent of inconsistency with  
 25          the act; providing an effective date.

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

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 29           Section 1. Subsection (4) of section 907.041, Florida  
 30 Statutes, is amended to read:  
 31           907.041 Pretrial detention and release.--

1           (4) PRETRIAL DETENTION.--  
2           (a) As used in this subsection, "dangerous crime"  
3 means any of the following:  
4           1. Arson;  
5           2. Aggravated assault;  
6           3. Aggravated battery;  
7           4. Illegal use of explosives;  
8           5. Child abuse or aggravated child abuse;  
9           6. Abuse of an elderly person or disabled adult; or  
10 aggravated abuse of an elderly person or disabled adult;  
11           7. Hijacking;  
12           8. Kidnapping;  
13           9. Homicide;  
14           10. Manslaughter;  
15           11. Sexual battery;  
16           12. Robbery;  
17           13. Carjacking;  
18           14. Lewd, lascivious, or indecent assault or act upon  
19 or in presence of a child under the age of 16 years;  
20           15. Sexual activity with a child, who is 12 years of  
21 age or older but less than 18 years of age, by or at  
22 solicitation of person in familial or custodial authority;  
23           16. Burglary of a dwelling;  
24           17. Stalking and aggravated stalking;  
25           18. Act of domestic violence as defined in s. 741.28;  
26 and  
27           19. Attempting or conspiring to commit any such crime;  
28 and home-invasion robbery.  
29           (b) The court may order pretrial detention if it finds  
30 a substantial probability, based on a defendant's past and  
31 present patterns of behavior, the criteria in s. 903.046, and

1 any other relevant facts, that any of the following  
2 circumstances exists:  
3       1. The defendant has previously violated conditions of  
4 release and that no further conditions of release are  
5 reasonably likely to assure the defendant's appearance at  
6 subsequent proceedings;  
7       2. The defendant, with the intent to obstruct the  
8 judicial process, has threatened, intimidated, or injured any  
9 victim, potential witness, juror, or judicial officer, or has  
10 attempted or conspired to do so, or that no condition of  
11 release will reasonably assure the integrity of ~~prevent the~~  
12 ~~obstruction of~~ the judicial process;  
13       3. The defendant is charged with trafficking in  
14 controlled substances as defined by s. 893.135, that there is  
15 a substantial probability that the defendant has committed the  
16 offense, and that no conditions of release will reasonably  
17 assure the defendant's appearance at subsequent criminal  
18 proceedings; or  
19       4. The defendant poses the threat of harm to the  
20 community. The court may so conclude if it finds that the  
21 defendant is presently charged with a dangerous crime, that  
22 there is a substantial probability that the defendant  
23 committed such crime, that the factual circumstances of the  
24 crime indicate a disregard for the safety of the community,  
25 and that there are no conditions of release reasonably  
26 sufficient to protect the community from the risk of physical  
27 harm to persons. ~~In addition, the court must find that at~~  
28 ~~least one of the following conditions is present:~~  
29       a. ~~The defendant has previously been convicted of a~~  
30 ~~crime punishable by death or life imprisonment.~~  
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1           ~~b. The defendant has been convicted of a dangerous~~  
2 ~~crime within the 10 years immediately preceding the date of~~  
3 ~~his or her arrest for the crime presently charged.~~

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

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

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

20           1. The nature and circumstances of the offense  
21 charged;

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

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

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

30           (d) When a person charged with a crime for which  
31 pretrial detention could be ordered is arrested, the arresting

1 agency may detain such defendant, prior to the filing by the  
2 state attorney of a motion seeking pretrial detention, for a  
3 period not to exceed 24 hours.

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

13       (f) The state attorney has the burden of showing the  
14 need for pretrial detention.

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

26       (h) The pretrial detention order of the court shall be  
27 based solely upon evidence produced at the hearing and shall  
28 contain findings of fact and conclusions of law to support it.  
29 The order shall be made either in writing or orally on the  
30 record. The court shall render its findings within 24 hours of  
31 the pretrial detention hearing.

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

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

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

15           (k) Nothing in this section shall be construed to  
16 require the filing of a motion for pretrial detention as a  
17 condition precedent to detaining the defendant if the  
18 defendant is brought before the court for a bail hearing.  
19 Notwithstanding paragraph (e), the state may orally move for  
20 pretrial detention any time a defendant is before the court  
21 for a bail hearing.

22           Section 2. Rules 3.131 and 3.132, Florida Rules of  
23 Criminal Procedure, are hereby repealed to the extent that  
24 they are inconsistent with this act.

25           Section 3. This act shall take effect upon becoming a  
26 law, except that section 2 shall take effect only if this act  
27 is passed by the affirmative vote of two-thirds of the  
28 membership of each house of the Legislature.

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