

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; amending s. 901.31, F.S.; providing an
26 effective date.

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

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30 Section 1. 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;

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

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

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

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

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.c. 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.

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

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

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

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

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

29 (d) When a person charged with a crime for which
30 pretrial detention could be ordered is arrested, the arresting
31 agency may detain such defendant, prior to the filing by the

1 state attorney of a motion seeking pretrial detention, for a
2 period not to exceed 24 hours.

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

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

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

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

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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. Section 903.301, Florida Statutes, is
26 amended to read:

27 903.31 Canceling the bond.--

28 (1) Within 10 business days after the conditions of a
29 bond have been satisfied or the forfeiture discharged or
30 remitted, the court shall order the bond canceled and, if the
31 surety has attached a certificate of cancellation to the

1 original bond, shall furnish an executed certificate of
2 cancellation to the surety without cost. An adjudication of
3 guilt or innocence of the defendant shall satisfy the
4 conditions of the bond. The original appearance bond shall
5 not be construed to guarantee deferred sentences, appearance
6 during or after a presentence investigation, appearance during
7 or after appeals, conduct during or appearance after admission
8 to a pretrial intervention program, payment of fines, or
9 attendance at educational or rehabilitation facilities the
10 court otherwise provides in the judgment.

11 (2) In any case where no formal charges have been
12 brought against defendant within 365 days of arrest, the court
13 shall order the bond canceled unless good cause is shown by
14 the state.

15 Section 4. This act shall take effect upon becoming a
16 law, except that section 2 shall take effect only if this act
17 is passed by the affirmative vote of two-thirds of the
18 membership of each house of the Legislature.

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