

STORAGE NAME: h0107.jud
DATE: October 28, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 107

RELATING TO: Pretrial Detention & Release

SPONSOR(S): Representative Rayson

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY
 - (2) CRIME & PUNISHMENT
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

The bill amends section 903.047, Florida Statutes, to provide for revocation of pretrial release by the court when a defendant violates any condition of his or her release or the conditions set out in sections 903.047(1) and (2), F.S. The bill requires a court to hold a hearing to determine if any violations of release have occurred and outlines the procedure for the hearing.

The bill allows a court to detain a defendant pending the hearing and to credit that time served to any sentence imposed under section 921.161, F.S. The bill also allows for the dissolution of pretrial detention when the court determines that the need for such detention is extinguished.

The bill amends section 907.041, F.S., to allow the court to revoke pretrial release upon violation of any condition of release and order pretrial detention.

The bill does not appear to have any significant fiscal impact.

The bill shall become effective July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A

The bill appears to broaden the standard as to what constitutes a violation of pretrial release. As a result, individuals who under current law are eligible for pretrial release may be detained under the provisions of this bill.

- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Section 903.047, F.S., sets out conditions of pretrial release and allows the court to modify those conditions for good cause and in order to serve the interests of justice. Section 907.041, F.S., deals with pretrial detention and release.

Constitutional Right to Bail

Article 1, Section 14 of the Florida Constitution provides for two exceptions to the right to bail. The first exception applies to persons charged with a capital offense or an offense punishable by life imprisonment where the proof of guilt is evident or the presumption is great. State v. Arthur, 390 So.2d 717 (Fla. 1980). The second exception applies where no "conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process..." Article I, Section 14, Fla. Const. This constitutional provision is implemented by sections 903.046 and 907.041, F.S.

Statutory Right to Bail

Section 907.041, F.S. (Pretrial Detention and Release), provides for denial of bail to defendants when the court finds that:

- 1. the defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings; (**or**)
- 2. the defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process; (**or**)
- 3. the defendant is charged with trafficking in controlled substances as defined by section 893.135, that there is a substantial probability that the defendant has committed the

offense, and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings; **(or)**

4. the defendant poses the threat of harm to the community. The court may so conclude if it finds that the defendant is presently charged with a **dangerous crime**, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. In addition, the court must find at least one of the following conditions present:
 - a. The defendant has previously been convicted of a crime punishable by death or life imprisonment.
 - b. The defendant has been convicted of a dangerous crime within the 10 years immediately preceding the date of his or her arrest for the crime presently charged.
 - c. The defendant is on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time of the current arrest.

Dangerous Crimes Enumerated

To deny bail on the basis that the defendant poses a threat of physical harm to persons in the community (paragraph 4., above), the defendant must be charged with a "**dangerous crime**", as defined by section 907.041, F.S. These crimes include:

1. Arson;
2. Aggravated assault;
3. Aggravated battery;
4. Illegal use of explosive;
5. Child abuse or aggravated child abuse;
6. Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult;
7. Hijacking;
8. Kidnaping;
9. Homicide;
10. Manslaughter;
11. Sexual battery;
12. Robbery;
13. Carjacking;
14. Lewd, lascivious, or indecent assault or act upon or in the presence of a child under the age of 16 years;
15. Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority;
16. Burglary of a dwelling;
17. Stalking or aggravated stalking;
18. Act of domestic violence as defined in section 741.28; and
19. Attempting or conspiring to attempt any such crime; and home-invasion robbery.

Procedural Requirements of 907.041, F.S.

In addition to establishing criteria for denying bail, section 907.041 includes several procedural requirements, as follows:

- Arresting agency must notify state attorney of arrest of qualified defendants.
- Arresting agency may hold the defendant up to 24 hours pending the filing of a motion for pretrial detention by the state attorney.
- A hearing on the motion for pretrial detention must be held within 5 days, but a state attorney is allowed one continuance for good cause. A defendant may be held in jail until the hearing.
- The state attorney has the burden of showing the need for pretrial detention.
- The defendant may present witnesses and evidence and may cross-examine the state's witnesses.
- The court may admit relevant evidence, but the Florida Evidence Code does not apply, except that no evidence will be admitted which was procured in violation of the state or federal constitutions.
- The defendant's testimony may not be used as evidence of guilt at any other proceeding, other than a perjury proceeding, or for impeachment.
- The court will prepare a pretrial detention order based on the evidence produced at the hearing within 24 hours of the hearing.
- If bail is denied, any failure to bring the defendant to trial within 90 days results in the defendant's release.

Legislative Intent Regarding Bail

Section 903.046, F.S., sets forth the Legislature's "**purpose of and criteria for bail determination**":

- (1) The purpose of bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and **to protect the community against unreasonable danger from the criminal defendant.**
- (2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider:
 - (a) The nature and circumstances of the offense charged.
 - (b) The weight of the evidence against the defendant.
 - (c) The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
 - (d) The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings. However, any defendant who previously had willfully and knowingly failed to appear and breached a bond as specified in section 903.26, but who had voluntarily appeared and surrendered, shall not be eligible for a recognizance bond; and any defendant who willfully and knowingly failed to appear and breached a bond as specified in section 903.26 and who was arrested at any time following forfeiture shall not be eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice that value of the monetary commitment or undertaking of the original bond, whichever is greater.

- (e) The nature and probability of danger which the defendant's release poses to the community.
- (f) The source of funds used to post bail.
- (g) Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- (h) The street value of any drug or controlled substance connected to or involved in the criminal charge. It is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

Conditions of Pretrial Release

Section 903.047, F.S., provides, as a condition of pretrial release, for the court to require of a defendant, that:

- (a) he or she refrain from any kind of criminal activity; and
- (b) he or she refrain from any type of contact with the victim, except as allowed during pretrial discovery.

The section also allows the court to modify the requirements for good cause and in the interest of justice. The victim shall be heard at any proceeding involving such modification and the state attorney will inform the victim of the requirements as set out in this section, as well as the status of any proceeding under this section.

C. EFFECT OF PROPOSED CHANGES:

Note: This bill contains the same provisions as Rule 3.131, Florida Rules of Criminal Procedure, which is currently in effect in all courts.

The bill creates a procedure for revocation of pretrial release for violation of any condition or agreement of release, including the two provisions of section 903.047 (1), F.S. The court shall hold a hearing to determine if there has been a violation within five days of a motion to revoke pretrial release made by the state attorney. A defendant may receive a continuance not to last more than 5 days, unless extenuating circumstances arise. The state attorney is allowed one continuance for good cause if the defendant is detained pending the hearing.

The bill outlines the evidentiary rules for the hearing. The court may admit relevant evidence without strictly complying with the rules of evidence, but may not admit evidence gathered in violation of the state or federal constitution. Testimony of the defendant is not admissible to prove guilt in any other proceeding, but may be used in an action for perjury or for purposes of impeachment.

The bill requires the court to rule on the revocation motion within 24 hours after the hearing. If convicted, the defendant will be credited with the time spent detained pending the hearing if the sentence is imposed under section 921.161, F.S. Also, a defendant is entitled to have a pretrial detention order dissolved if the court determines that events have occurred that eliminate the basis for detention.

The bill amends section 907.041, F.S., to allow a court to revoke pretrial release upon finding violation of any condition of release and require pretrial detention.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill appears to have no impact on state revenues.

2. Expenditures:

The bill appears to have no impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill appears to have no impact on local government revenues.

2. Expenditures:

The effect on local governments is not clear at this time. The Association of Counties did not have the information available, however a meeting is scheduled for November 10 to discuss the figures associated with this legislation, such as cost per day of housing inmates and the increase of inmates in facilities due to a change in detainment procedure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have no direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Corrections indicates that this bill has no fiscal impact upon the department

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

While the bill may create an increased load on local prison resources, such increase is likely to be marginal and therefore without significant fiscal effect. Regardless, because the bill deals with criminal penalties, it is exempt from the mandate provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill apparently contains the same provisions as Rule 3.131, Fla.R.Crim.P., which is in effect throughout the state. It is unclear what HB 107 will add to the rule.

C. OTHER COMMENTS:

Under section 1, paragraph 4, line 19, a defendant's continuance may not exceed 5 days unless there are extenuating circumstances. "Extenuating" is not defined in the bill, nor is it defined in section 903.047 as it is currently reported in Florida Statutes. The State Courts Administrator's office does not foresee any significant costs to litigation arising from this language.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael Poche'

P.K. Jameson