

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 134

SPONSOR: Criminal Justice Committee and Senator Diaz-Balart

SUBJECT: Pretrial Release

DATE: January 20, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gomez/Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill makes various changes to the pretrial detention and release statutes, including:

- ▶ Revising the current prohibition against recognizance bonds and certain monetary bonds by making it applicable to any defendant who previously failed to appear, even if it was not a willful and knowing failure to appear and even if the defendant did not breach a bond.
- ▶ Revising legislative intent by removing the presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release, *if the person is charged with a dangerous crime*.
- ▶ Prohibiting the court at a first appearance hearing from granting nonmonetary pretrial release to any person charged with a “dangerous crime.” Requiring a hearing to determine eligibility for nonmonetary pretrial release within 72 hours of the first appearance of any person charged with a “dangerous crime”.
- ▶ Permitting a court, on its own initiative, to revoke pretrial release and order pretrial detention if it finds probable cause to believe that the defendant committed a new crime while on pretrial release, and the court finds release would risk harm to persons, not assure presence at trial or assure the integrity of the judicial process.

This bill takes effect upon becoming a law, except that section 4 shall take effect only if it is passed by the affirmative vote of two-thirds of the membership of the Legislature.

This bill creates section 903.0471 and amends sections 903.046, 907.041 of the Florida Statutes.

II. Present Situation:

A. Pretrial services programs

Pretrial services programs are county-based programs which exist in close to half of Florida's counties. According to the Association of Counties: "Pre-trial programs are cost-saving mechanisms established by many urban and mid-sized Florida counties."

These programs are designed to alleviate the pretrial detention populations in county jails by screening defendants when they are arrested to determine those who are a safe risk for release pending trial. Defendants are typically screened through a comprehensive review of various factors including prior records and a psychological profile. After reviewing the screening assessment and consulting with the state attorney and defense attorney, the judge determines whether the defendant is released. Many defendants released into a pretrial services program are supervised and subject to home visits, electronic monitoring, or required to receive drug or alcohol treatment.

B. Statutory provisions relating to pretrial release on nonmonetary conditions

Florida Statutes do not expressly address pretrial services programs. However, several provisions address pretrial release on nonmonetary conditions. Release on nonmonetary conditions is a central feature of pretrial services programs.

First, s. 903.046, F.S., provides legislative intent creating a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release. This legislative intent further provides that a person granted pretrial release shall be released on monetary conditions if it is determined that monetary conditions are necessary to assure the presence of the person at trial, to protect the community from risk of physical harm to persons, to assure the presence of the accused at trial, and to assure the integrity of the judicial process.

Second, s. 903.046(2)(d), F.S., prohibits a recognizance bond (release without any \$ requirement) for any defendant who previously:

1. willfully and knowingly failed to appear,
2. breached a bond, and
3. voluntarily appeared or surrendered.

Section 903.046(2)(d), F.S., also prohibits a recognizance bond or any monetary bond less than \$2,000 or twice the value of the original bond which ever is greater, for any defendant who:

1. willfully and knowingly failed to appear,
2. breached a bond, and
3. was arrested at any time following the forfeiture.

C. Statutory provisions relating to pretrial detention and release, generally

Paragraph (4)(b) of s. 907.041, F.S. (Pretrial Detention and Release), lists four criteria for denying bail to defendants:

The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, F.S., and any other relevant facts, 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;
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;
3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, F.S., 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 that at least one of the following conditions is 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.

To deny pretrial release on the basis that the defendant poses a threat of physical harm to persons in the community (see number 4 above), the defendant must be charged with a "*dangerous crime*." Paragraph (4)(a) of s. 907.041, F.S., enumerates 19 dangerous crimes, some examples include arson, robbery, and homicide.

Section 903.046, F.S., sets forth the Legislature's "purpose of and criteria for bail determination." This section is cross-referenced in s. 907.041(4)(b), F.S., and thus is inextricably linked. Section 903.046, F.S., provides:

1. The purpose of a 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 s. 903.26, F.S., but who had voluntarily appeared or 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 s. 903.26, F.S., 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 the 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 social 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.

- i. The nature and probability of intimidation and danger to victims.
- j. Any other facts that the court considers relevant.

D. Pretrial detention and release provisions in the Florida Rules of Criminal Procedure

Rule 3.131, Florida Rules of Criminal Procedure, describes the pretrial release procedures. Rule 3.131(a), Fla.R.Crim.P., restates the constitutional provision which provides an entitlement to pretrial release on reasonable condition to non-capital defendants, unless there is a risk of harm to the community or a risk of flight. Rule 3.132, Fla.R.Crim.P., describes the procedures for the pretrial detention hearing. Rule 3.132(a), Fla.R.Crim.P., requires that a person arrested shall be provided a “first appearance hearing” within 24 hours of arrest.

III. Effect of Proposed Changes:

- ▶ Amends s. 903.046, F.S., by deleting references to a “willful and knowing” failure to appear and that the defendant breached a bond. This makes the current prohibition against recognizance bonds and certain monetary bonds applicable to any defendant who previously failed to appear, even if it was not a willful and knowing failure to appear and even if the defendant did not breach a bond.
- ▶ Amends s. 903.046, F.S., to require the court to consider, when determining whether to release a defendant on bail or other conditions, whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- ▶ Revises legislative intent contained in s. 907.041(3), F.S., by removing the presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release, *if the person is charged with a dangerous crime*.
- ▶ Amends s. 907.041(3), F.S., to prohibit the release of a defendant on nonmonetary conditions and under the supervision of a pretrial release service, unless the service *certifies* to the court that it has *investigated or otherwise verified* an enumerated list of factors.
- ▶ Amends s. 907.041(4), F.S., to prohibits the court at a first appearance hearing from granting nonmonetary pretrial release to any person charged with a “dangerous crime.” However, it requires a hearing to determine eligibility for nonmonetary pretrial release within 72 hours of the first appearance of any person charged with a “dangerous crime”.
- ▶ Creates s. 903.0471, F.S., permitting a court, on its own initiative, to revoke pretrial release and order pretrial detention if it finds probable cause to believe that the defendant committed a new crime while on pretrial release, and the court finds release would risk harm to persons, not assure presence at trial or assure the integrity of the judicial process.
- ▶ Repeals Rules 3.121 and 3.132, to the extent these rules are inconsistent with act.
- ▶ Provides the act shall take effect upon becoming a law, except that section 4 shall take effect only if it is passed by the affirmative vote of two-thirds of the membership of the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None anticipated.

C. Government Sector Impact:

The bill is likely to result in more detainees in county jails; though an accurate prediction of the increase seems impossible. Assuming there will be an increase in the number of detainees in county jails, the counties will experience an indeterminate negative fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.