

By the Committee on Criminal Justice and Senator Diaz-Balart

307-847-00

1                                   A bill to be entitled  
2           An act relating to pretrial release; amending  
3           s. 903.046, F.S.; revising criteria for bail  
4           determination; amending s. 907.041, F.S.;  
5           prohibiting persons charged with dangerous  
6           crimes from being placed on pretrial release on  
7           nonmonetary conditions at first appearance  
8           hearings; providing criteria for pretrial  
9           release on nonmonetary conditions; creating s.  
10          903.0471, F.S.; authorizing a court to order  
11          pretrial detention for persons on pretrial  
12          release who commit new crimes under certain  
13          circumstances; repealing Rules 3.131 and 3.132,  
14          Florida Rules of Criminal Procedure, relating  
15          to pretrial release and pretrial detention, to  
16          the extent those rules are inconsistent with  
17          this act; providing an effective date.

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

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21           Section 1. Paragraph (d) of subsection (2) of section  
22          903.046, Florida Statutes, is amended, present paragraph (j)  
23          of that subsection is redesignated as paragraph (k), and a new  
24          paragraph (j) is added to that subsection to read:

25                   903.046 Purpose of and criteria for bail  
26          determination.--

27                   (2) When determining whether to release a defendant on  
28          bail or other conditions, and what that bail or those  
29          conditions may be, the court shall consider:

30                   (d) The defendant's past and present conduct,  
31          including any record of convictions, previous flight to avoid

1 prosecution, or failure to appear at court proceedings.  
2 However, any defendant who previously had ~~willfully and~~  
3 ~~knowingly~~ failed to appear for any required court proceeding  
4 ~~and breached a bond as specified in s. 903.26~~, but who had  
5 voluntarily appeared or surrendered, shall not be eligible for  
6 a recognizance bond; and any defendant who ~~willfully and~~  
7 ~~knowingly~~ failed to appear ~~and breached a bond as specified in~~  
8 ~~s. 903.26~~ and who was later arrested ~~at any time following~~  
9 ~~forfeiture~~ shall not be eligible for a recognizance bond or  
10 for any form of bond which does not require a monetary  
11 undertaking or commitment equal to or greater than \$2,000 or  
12 twice the value of the monetary commitment or undertaking of  
13 the original bond, whichever is greater.

14 (j) Whether there is probable cause to believe that  
15 the defendant committed a new crime while on pretrial release.

16 Section 2. Subsections (3) and (4) of section 907.041,  
17 Florida Statutes, are amended to read:

18 907.041 Pretrial detention and release.--

19 (3) RELEASE ON NONMONETARY CONDITIONS.--

20 (a) It is the intent of the Legislature to create a  
21 presumption in favor of release on nonmonetary conditions for  
22 any person who is granted pretrial release unless such person  
23 is charged with a dangerous crime as defined in subsection  
24 (4). Such person shall be released on monetary conditions  
25 ~~only~~ if it is determined that such monetary conditions are  
26 necessary to assure the presence of the person at trial or at  
27 other proceedings, to protect the community from risk of  
28 physical harm to persons, to assure the presence of the  
29 accused at trial, or to assure the integrity of the judicial  
30 process.

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1           (b) No person shall be released on nonmonetary  
2 conditions under the supervision of a pretrial release  
3 service, unless the service certifies to the court that it has  
4 investigated or otherwise verified:

5           1. The circumstances of the accused's family,  
6 employment, financial resources, character, mental condition,  
7 and length of residence in the community;

8           2. The accused's record of convictions, of appearances  
9 at court proceedings, of flight to avoid prosecution, or of  
10 failure to appear at court proceedings; and

11           3. Other facts necessary to assist the court in its  
12 determination of the indigency of the accused and whether she  
13 or he should be released under the supervision of the service.

14           (4) PRETRIAL DETENTION.--

15           (a) As used in this subsection, "dangerous crime"  
16 means any of the following:

- 17           1. Arson;
- 18           2. Aggravated assault;
- 19           3. Aggravated battery;
- 20           4. Illegal use of explosives;
- 21           5. Child abuse or aggravated child abuse;
- 22           6. Abuse of an elderly person or disabled adult, or
- 23 aggravated abuse of an elderly person or disabled adult;
- 24           7. Hijacking;
- 25           8. Kidnapping;
- 26           9. Homicide;
- 27           10. Manslaughter;
- 28           11. Sexual battery;
- 29           12. Robbery;
- 30           13. Carjacking;

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1           14. Lewd, lascivious, or indecent assault or act upon  
2 or in presence of a child under the age of 16 years;

3           15. Sexual activity with a child, who is 12 years of  
4 age or older but less than 18 years of age, by or at  
5 solicitation of person in familial or custodial authority;

6           16. Burglary of a dwelling;

7           17. Stalking and aggravated stalking;

8           18. Act of domestic violence as defined in s. 741.28;  
9 and

10           19. Attempting or conspiring to commit any such crime;  
11 and home-invasion robbery.

12           (b) No person charged with a dangerous crime shall be  
13 granted nonmonetary pretrial release at a first appearance  
14 hearing. A hearing to determine eligibility for nonmonetary  
15 pretrial release must be held within 72 hours after the first  
16 appearance hearing of any person charged with a dangerous  
17 crime who was not granted nonmonetary release at first  
18 appearance.

19           ~~(c)(b)~~ The court may order pretrial detention if it  
20 finds a substantial probability, based on a defendant's past  
21 and present patterns of behavior, the criteria in s. 903.046,  
22 and any other relevant facts, that:

23           1. The defendant has previously violated conditions of  
24 release and that no further conditions of release are  
25 reasonably likely to assure the defendant's appearance at  
26 subsequent proceedings;

27           2. The defendant, with the intent to obstruct the  
28 judicial process, has threatened, intimidated, or injured any  
29 victim, potential witness, juror, or judicial officer, or has  
30 attempted or conspired to do so, and that no condition of  
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1 release will reasonably prevent the obstruction of the  
2 judicial process;

3 3. The defendant is charged with trafficking in  
4 controlled substances as defined by s. 893.135, that there is  
5 a substantial probability that the defendant has committed the  
6 offense, and that no conditions of release will reasonably  
7 assure the defendant's appearance at subsequent criminal  
8 proceedings; or

9 4. The defendant poses the threat of harm to the  
10 community. The court may so conclude, if it finds that the  
11 defendant is presently charged with a dangerous crime, that  
12 there is a substantial probability that the defendant  
13 committed such crime, that the factual circumstances of the  
14 crime indicate a disregard for the safety of the community,  
15 and that there are no conditions of release reasonably  
16 sufficient to protect the community from the risk of physical  
17 harm to persons. In addition, the court must find that at  
18 least one of the following conditions is present:

19 a. The defendant has previously been convicted of a  
20 crime punishable by death or life imprisonment.

21 b. The defendant has been convicted of a dangerous  
22 crime within the 10 years immediately preceding the date of  
23 his or her arrest for the crime presently charged.

24 c. The defendant is on probation, parole, or other  
25 release pending completion of sentence or on pretrial release  
26 for a dangerous crime at the time of the current arrest.

27 (d)~~(c)~~ When a person charged with a crime for which  
28 pretrial detention could be ordered is arrested, the arresting  
29 agency shall promptly notify the state attorney of the arrest  
30 and shall provide the state attorney with such information as  
31 the arresting agency has obtained relative to:

1           1. The nature and circumstances of the offense  
2 charged;

3           2. The nature of any physical evidence seized and the  
4 contents of any statements obtained from the defendant or any  
5 witness;

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

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

11           (e)~~(d)~~ When a person charged with a crime for which  
12 pretrial detention could be ordered is arrested, the arresting  
13 agency may detain such defendant, prior to the filing by the  
14 state attorney of a motion seeking pretrial detention, for a  
15 period not to exceed 24 hours.

16           (f)~~(e)~~ The court shall order detention only after a  
17 pretrial detention hearing. The hearing shall be held within  
18 5 days of the filing by the state attorney of a complaint to  
19 seek pretrial detention. The defendant may request a  
20 continuance. No continuance shall be for longer than 5 days  
21 unless there are extenuating circumstances. The defendant may  
22 be detained pending the hearing. The state attorney shall be  
23 entitled to one continuance for good cause.

24           (g)~~(f)~~ The state attorney has the burden of showing  
25 the need for pretrial detention.

26           (h)~~(g)~~ The defendant is entitled to be represented by  
27 counsel, to present witnesses and evidence, and to  
28 cross-examine witnesses. The court may admit relevant  
29 evidence without complying with the rules of evidence, but  
30 evidence secured in violation of the United States  
31 Constitution or the Constitution of the State of Florida shall

1 not be admissible. No testimony by the defendant shall be  
2 admissible to prove guilt at any other judicial proceeding,  
3 but such testimony may be admitted in an action for perjury,  
4 based upon the defendant's statements made at the pretrial  
5 detention hearing, or for impeachment.

6 (i)~~(h)~~ The pretrial detention order of the court shall  
7 be based solely upon evidence produced at the hearing and  
8 shall contain findings of fact and conclusions of law to  
9 support it. The order shall be made either in writing or  
10 orally on the record. The court shall render its findings  
11 within 24 hours of the pretrial detention hearing.

12 (j)~~(i)~~ If ordered detained pending trial pursuant to  
13 subparagraph~~(c)4.(b)4.~~, the defendant may not be held for  
14 more than 90 days. Failure of the state to bring the  
15 defendant to trial within that time shall result in the  
16 defendant's release from detention, subject to any conditions  
17 of release, unless the trial delay was requested or caused by  
18 the defendant or his or her counsel.

19 (k)~~(j)~~ A defendant convicted at trial following the  
20 issuance of a pretrial detention order shall have credited to  
21 his or her sentence, if imprisonment is imposed, the time the  
22 defendant was held under the order, pursuant to s. 921.161.

23 (l)~~(k)~~ The defendant shall be entitled to dissolution  
24 of the pretrial detention order whenever the court finds that  
25 a subsequent event has eliminated the basis for detention.

26 Section 3. Section 903.0471, Florida Statutes, is  
27 created to read:

28 903.0471 Violation of condition of pretrial  
29 release.--Notwithstanding s. 907.041, a court may, on its own  
30 motion, revoke pretrial release and order pretrial detention  
31 if the court finds probable cause to believe that the

1 defendant committed a new crime while on pretrial release and,  
2 in the discretion of the court, the facts and circumstances  
3 support a finding that no conditions of release can reasonably  
4 protect the community from the risk of physical harm to  
5 persons, assure the presence of the accused at trial, or  
6 assure the integrity of the judicial process.

7 Section 4. Rules 3.131 and 3.132, Florida Rules of  
8 Criminal Procedure, are repealed to the extent that the rules  
9 are inconsistent with this act.

10 Section 5. This act shall take effect upon becoming a  
11 law, except that section 4 shall take effect only if this act  
12 is passed by the affirmative vote of two-thirds of the  
13 membership of each house of the Legislature.

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- 1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 134
- 4 -       Removes provision which permits court, under specified  
5       circumstances, to order pretrial detention of a  
6       defendant charged with DUI manslaughter.
- 7 -       Deletes references to a "willful and knowing" failure to  
8       appear and that the defendant breached a bond. This  
9       makes the current prohibition against recognizance bonds  
10      and certain monetary bonds applicable to any defendant  
11      who previously failed to appear, even if it was not a  
12      willful and knowing failure to appear and even if the  
13      defendant did not breach a bond.
- 14 -      Requires the court to consider, when determining whether  
15      to release a defendant on bail or other conditions,  
16      whether there is probable cause to believe that the  
17      defendant committed a new crime while on pretrial  
18      release.
- 19 -      Revises legislative intent by removing the presumption  
20      in favor of release on nonmonetary conditions for any  
21      person who is granted pretrial release, if the person is  
22      charged with a dangerous crime.
- 23 -      Prohibits the release of a defendant on nonmonetary  
24      conditions and under the supervision of a pretrial  
25      release service, unless the service certifies to the  
26      court that it has investigated or otherwise verified an  
27      enumerated list of factors.
- 28 -      Prohibits the court at a first appearance hearing from  
29      granting nonmonetary pretrial release to any person  
30      charged with a "dangerous crime." However, it requires a  
31      hearing to determine eligibility for nonmonetary  
32      pretrial release within 72 hours of the first appearance  
33      of any person charged with a "dangerous crime."
- 34 -      Permits a court, on its own initiative, to revoke  
35      pretrial release and order pretrial detention if it  
36      finds probable cause to believe that the defendant  
37      committed a new crime while on pretrial release, and the  
38      court finds release would risk harm to persons, not  
39      assure presence at trial or assure the integrity of the  
40      judicial process.
- 41 -      Repeals Rules 3.121 and 3.132, to the extent these rules  
42      are inconsistent with the act.