

By the Committees on Fiscal Policy, Criminal Justice and  
Senator Diaz-Balart

309-1734-00

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.

18  
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 on the day of any required court~~  
4 ~~proceeding in the case at issue and breached a bond as~~  
5 ~~specified in s. 903.26~~, but who had later voluntarily appeared  
6 or surrendered, shall not be eligible for a recognizance bond;  
7 and any defendant who ~~willfully and knowingly failed to appear~~  
8 ~~on the day of any required court proceeding in the case at~~  
9 ~~issue and breached a bond as specified in s. 903.26~~ and who  
10 was later arrested ~~at any time following forfeiture~~ shall not  
11 be eligible for a recognizance bond or for any form of bond  
12 which does not require a monetary undertaking or commitment  
13 equal to or greater than \$2,000 or twice the value of the  
14 monetary commitment or undertaking of the original bond,  
15 whichever is greater. Notwithstanding anything in this  
16 section, the court has discretion in determining conditions of  
17 release if the defendant proves circumstances beyond his or  
18 her control for the failure to appear. This section may not be  
19 construed as imposing additional duties or obligations on a  
20 governmental entity related to monetary bonds.

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

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

25 907.041 Pretrial detention and release.--

26 (3) RELEASE ON NONMONETARY CONDITIONS.--

27 (a) It is the intent of the Legislature to create a  
28 presumption in favor of release on nonmonetary conditions for  
29 any person who is granted pretrial release unless such person  
30 is charged with a dangerous crime as defined in subsection  
31 (4). Such person shall be released on monetary conditions

1 ~~only~~ if it is determined that such monetary conditions are  
2 necessary to assure the presence of the person at trial or at  
3 other proceedings, to protect the community from risk of  
4 physical harm to persons, to assure the presence of the  
5 accused at trial, or to assure the integrity of the judicial  
6 process.

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

11 1. The circumstances of the accused's family,  
12 employment, financial resources, character, mental condition,  
13 and length of residence in the community;

14 2. The accused's record of convictions, of appearances  
15 at court proceedings, of flight to avoid prosecution, or of  
16 failure to appear at court proceedings; and

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

20 (4) PRETRIAL DETENTION.--

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

- 23 1. Arson;
- 24 2. Aggravated assault;
- 25 3. Aggravated battery;
- 26 4. Illegal use of explosives;
- 27 5. Child abuse or aggravated child abuse;
- 28 6. Abuse of an elderly person or disabled adult, or
- 29 aggravated abuse of an elderly person or disabled adult;
- 30 7. Hijacking;
- 31 8. Kidnapping;

- 1           9. Homicide;
- 2           10. Manslaughter;
- 3           11. Sexual battery;
- 4           12. Robbery;
- 5           13. Carjacking;
- 6           14. Lewd, lascivious, or indecent assault or act upon
- 7 or in presence of a child under the age of 16 years;
- 8           15. Sexual activity with a child, who is 12 years of
- 9 age or older but less than 18 years of age, by or at
- 10 solicitation of person in familial or custodial authority;
- 11           16. Burglary of a dwelling;
- 12           17. Stalking and aggravated stalking;
- 13           18. Act of domestic violence as defined in s. 741.28;
- 14 and
- 15           19. Attempting or conspiring to commit any such crime;
- 16 and home-invasion robbery.
- 17           (b) No person charged with a dangerous crime shall be
- 18 granted nonmonetary pretrial release at a first appearance
- 19 hearing; however, the court shall retain the discretion to
- 20 release an accused on electronic monitoring or on recognizance
- 21 bond if the findings on the record of facts and circumstances
- 22 warrant such a release.
- 23           ~~(c)~~ (b) The court may order pretrial detention if it
- 24 finds a substantial probability, based on a defendant's past
- 25 and present patterns of behavior, the criteria in s. 903.046,
- 26 and any other relevant facts, that:
- 27           1. The defendant has previously violated conditions of
- 28 release and that no further conditions of release are
- 29 reasonably likely to assure the defendant's appearance at
- 30 subsequent proceedings;
- 31

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

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

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

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

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

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

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

6           1. The nature and circumstances of the offense  
7 charged;

8           2. The nature of any physical evidence seized and the  
9 contents of any statements obtained from the defendant or any  
10 witness;

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

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

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

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

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

31

1           (h)~~(g)~~ The defendant is entitled to be represented by  
2 counsel, to present witnesses and evidence, and to  
3 cross-examine witnesses. The court may admit relevant  
4 evidence without complying with the rules of evidence, but  
5 evidence secured in violation of the United States  
6 Constitution or the Constitution of the State of Florida shall  
7 not be admissible. No testimony by the defendant shall be  
8 admissible to prove guilt at any other judicial proceeding,  
9 but such testimony may be admitted in an action for perjury,  
10 based upon the defendant's statements made at the pretrial  
11 detention hearing, or for impeachment.

12           (i)~~(h)~~ The pretrial detention order of the court shall  
13 be based solely upon evidence produced at the hearing and  
14 shall contain findings of fact and conclusions of law to  
15 support it. The order shall be made either in writing or  
16 orally on the record. The court shall render its findings  
17 within 24 hours of the pretrial detention hearing.

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

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

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

1 Section 3. Section 903.0471, Florida Statutes, is  
2 created to read:

3 903.0471 Violation of condition of pretrial  
4 release.--Notwithstanding s. 907.041, a court may, on its own  
5 motion, revoke pretrial release and order pretrial detention  
6 if the court finds probable cause to believe that the  
7 defendant committed a new crime while on pretrial release and,  
8 in the discretion of the court, the facts and circumstances  
9 support a finding that no conditions of release can reasonably  
10 protect the community from the risk of physical harm to  
11 persons, assure the presence of the accused at trial, or  
12 assure the integrity of the judicial process.

13 Section 4. Rules 3.131 and 3.132, Florida Rules of  
14 Criminal Procedure, are repealed to the extent that the rules  
15 are inconsistent with this act.

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

20  
21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
22 COMMITTEE SUBSTITUTE FOR  
23 CS for SB 134

24 Removes "failure to appear for any required court proceeding"  
25 as a criterion for determining pretrial release and  
26 substitutes "failure to appear for a required court proceeding  
in the case at issue."

27 Gives the court the discretion to authorize pretrial release  
28 at first appearance for someone charged with commission of a  
dangerous crime if the findings on the record warrant such a  
release.