

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; amending s. 903.26, F.S.;  
14          revising time period for bond forfeiture  
15          payment and notice; repealing Rules 3.131 and  
16          3.132, Florida Rules of Criminal Procedure,  
17          relating to pretrial release and pretrial  
18          detention, to the extent those rules are  
19          inconsistent with this act; providing an  
20          effective date.

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

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24           Section 1. Paragraph (d) of subsection (2) of section  
25          903.046, Florida Statutes, is amended, present paragraph (j)  
26          of that subsection is redesignated as paragraph (k), and a new  
27          paragraph (j) is added to that subsection to read:

28           903.046 Purpose of and criteria for bail  
29          determination.--  
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1           (2) When determining whether to release a defendant on  
2 bail or other conditions, and what that bail or those  
3 conditions may be, the court shall consider:

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

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

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

30           907.041 Pretrial detention and release.--

31           (3) RELEASE ON NONMONETARY CONDITIONS.--

1           (a) It is the intent of the Legislature to create a  
2 presumption in favor of release on nonmonetary conditions for  
3 any person who is granted pretrial release unless such person  
4 is charged with a dangerous crime as defined in subsection  
5 (4). Such person shall be released on monetary conditions  
6 ~~only~~ if it is determined that such monetary conditions are  
7 necessary to assure the presence of the person at trial or at  
8 other proceedings, to protect the community from risk of  
9 physical harm to persons, to assure the presence of the  
10 accused at trial, or to assure the integrity of the judicial  
11 process.

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

16                 1. The circumstances of the accused's family,  
17 employment, financial resources, character, mental condition,  
18 and length of residence in the community;

19                 2. The accused's record of convictions, of appearances  
20 at court proceedings, of flight to avoid prosecution, or of  
21 failure to appear at court proceedings; and

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

25           (4) PRETRIAL DETENTION.--

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

- 28           1. Arson;
- 29           2. Aggravated assault;
- 30           3. Aggravated battery;
- 31           4. Illegal use of explosives;

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

1           1. The defendant has previously violated conditions of  
2 release and that no further conditions of release are  
3 reasonably likely to assure the defendant's appearance at  
4 subsequent proceedings;

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

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

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

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

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

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

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

9 1. The nature and circumstances of the offense  
10 charged;

11 2. The nature of any physical evidence seized and the  
12 contents of any statements obtained from the defendant or any  
13 witness;

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

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

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

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

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

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

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

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

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

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

4           Section 3. Section 903.0471, Florida Statutes, is  
5 created to read:

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

16           Section 4. Subsections (2) and (3) of section 903.26,  
17 Florida Statutes, are amended to read:

18           903.26 Forfeiture of the bond; when and how directed;  
19 discharge; how and when made; effect of payment.--

20           (2)(a) If there is a breach of the bond, the court  
21 shall declare the bond and any bonds or money deposited as  
22 bail forfeited. The clerk of the court shall mail a notice to  
23 the surety agent and surety company in writing within 5 days  
24 of the forfeiture. A certificate signed by the clerk of the  
25 court or the clerk's designee, certifying that the notice  
26 required herein was mailed on a specified date and accompanied  
27 by a copy of the required notice, shall constitute sufficient  
28 proof that such mailing was properly accomplished as indicated  
29 therein. If such mailing was properly accomplished as  
30 evidenced by such certificate, the failure of the surety  
31 agent, of a company, or of a defendant to receive such mail



1 notice shall not constitute a defense to such forfeiture and  
2 shall not be grounds for discharge, remission, reduction, set  
3 aside, or continuance of such forfeiture. The forfeiture  
4 shall be paid within 60 ~~35~~ days of the date the notice was  
5 mailed.

6 (b) Failure of the defendant to appear at the time,  
7 date, and place of required appearance shall result in  
8 forfeiture of the bond. Such forfeiture shall be  
9 automatically entered by the clerk upon such failure to  
10 appear, and the clerk shall follow the procedures outlined in  
11 paragraph (a). However, the court may determine, in its  
12 discretion, in the interest of justice, that an appearance by  
13 the defendant on the same day as required does not warrant  
14 forfeiture of the bond; and the court may direct the clerk to  
15 set aside any such forfeiture which may have been entered.  
16 Any appearance by the defendant later than the required day  
17 constitutes forfeiture of the bond, and the court shall not  
18 preclude entry of such forfeiture by the clerk.

19 (c) If there is a breach of the bond, the clerk shall  
20 provide, upon request, a certified copy of the warrant or  
21 *capias* to the bail bond agent or surety company.

22 (3) Sixty ~~Thirty-five~~ days after the forfeiture notice  
23 has been mailed:

24 (a) State and county officials having custody of  
25 forfeited money shall deposit the money in the county fine and  
26 forfeiture fund;

27 (b) Municipal officials having custody of forfeited  
28 money shall deposit the money in a designated municipal fund;

29 (c) Officials having custody of bonds as authorized by  
30 s. 903.16 shall transmit the bonds to the clerk of the circuit

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1 court who shall sell them at market value and disburse the  
2 proceeds as provided in paragraphs (a) and (b).

3 Section 5. Rules 3.131 and 3.132, Florida Rules of  
4 Criminal Procedure, are repealed to the extent that the rules  
5 are inconsistent with this act.

6 Section 6. This act shall take effect upon becoming a  
7 law, except that section 5 shall take effect only if this act  
8 is passed by the affirmative vote of two-thirds of the  
9 membership of each house of the Legislature.

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