

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: SB 136

SPONSOR: Senator Diaz-Balart

SUBJECT: Pretrial Detention

DATE: November 17, 1999 REVISED: 01/14/00 01/19/00 _____

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

I. Summary:

This bill creates the Trooper Robert Smith Act. This bill amends s. 907.041(4), F.S., to authorize the court to order pretrial detention (deny bail) to a defendant who is charged with DUI manslaughter when it finds:

- ▶ a substantial probability that the defendant committed the crime, and
- ▶ the defendant poses a threat of harm to the community. (The bill provides a non-exclusive list of conditions that would support this finding.)

The bill allows a judge to deny bail if no condition of release can reasonably protect the community from risk of physical harm and the offender is charged with a dangerous crime as specified by s. 907.041, F.S. Current law requires additional proof of one of the following: a prior conviction of a crime punishable by death or life, *or* prior conviction for a dangerous crime within the past 10 years, *or* that a showing that at the time of the new crime, the defendant was on probation or a similar legal restraint. The bill deletes the requirement of finding one of these additional conditions. The bill creates two additional conditions, which will allow a court to deny bail prior to trial.

The bill eliminates a 90-day cap placed on pretrial detention for defendants who are found to pose a danger to the community.

The bill specifies that nothing in s. 907.041, F.S., shall be construed to require the filing of a pretrial detention motion before a court may deny bail. It further specifies that the state may move for pretrial detention any time a defendant is in court for a bail hearing without the necessity of filing a written motion.

The bill repeals Rules 3.131 and 3.132 of the Florida Rules of Criminal Procedure relating to pretrial release and pretrial detention to the extent they are inconsistent with the provisions in the bill.

This bill takes effect on October 1, 2000, and substantially amends sections 907.041 and 903.31 of the Florida Statutes.

II. Present Situation:

A. DUI manslaughter

When, as a result of operating a vehicle while driving under the influence (DUI), a person causes the death of any human being, the person commits DUI manslaughter. *See*, s. 316.193(3), F.S. DUI manslaughter is a second-degree felony, punishable by a prison term of up to 15 years. *Id.* DUI manslaughter is enhanced to a first-degree felony (30-year maximum prison term) when, at the time of the accident, the person knew or should have known that the accident occurred and the person failed to render aid. *Id.*

There are other offenses which may be charged against a person who kills another with a vehicle. Vehicular homicide is the killing of a human being by the operation of a motor vehicle in a reckless manner likely to cause the death of, or great bodily harm to another. s. 782.071, F.S. Vehicular homicide is punished as a third-degree felony (5 year maximum sentence). The reckless element required to prove vehicular homicide is a lesser standard than the culpable negligence standard required for proof under the manslaughter statute, s. 782.07, F.S. *See, McCreary v. State*, 371 So. 2d 1024, 1026 (Fla. 1979). Manslaughter, which can also serve as a basis for a charge against a driver, is punished as a second-degree felony (15 year maximum sentence).

B. Constitutional provision on pretrial detention

The Eighth Amendment of the United States Constitution provides that “[e]xcessive bail shall not be required.”

Prior to January 1, 1983, Florida courts could deny bail for offenses which were punishable by death or by life in prison, only. Article I, s. 14 of the Florida Constitution guaranteed the right to bail for all other offenses. *See, State v. Arthur*, 390 So.2d 717 (Fla. 1980). However, Art. I, s. 14, Florida Constitution was amended effective January 1, 1983. The amendment gave Florida courts constitutional authority to detain an accused as described below.

Article I, s. 14 of the Florida Constitution now provides that “unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime shall be entitled to pretrial release on reasonable conditions.” This constitutional provision further states, “[i]f 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, the accused may be detained.”

The effect of the 1982 amendment was to allow courts to deny bail, in certain situations, to persons accused of offenses other than capital offenses or offenses punishable by life imprisonment. Section 907.041, F.S. (1983), provides an elaborate statutory scheme to implement Art. I, s. 14, Florida Constitution, as amended. *Gomez v. Hinkley*, 473 So.2d 809, 810 (Fla. 4th DCA 1985).

C. Statutory pretrial detention and release

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. "Manslaughter" is currently one of 19 dangerous crimes listed in s. 907.041(4)(a), F.S., for which pretrial detention may be authorized under certain conditions. Although an appellate court has not ruled that pretrial detention may be ordered for a

DUI manslaughter under s. 907.041(4)(a), F.S., the Florida Supreme Court's opinion in *White v. State*, 666 So. 2d 895 (Fla. 1996), could be logically extended to allow it under current law. In *White*, the Court construed the violent habitual offender statute, s. 775.084(1)(b)(1), F.S., which lists "manslaughter" without a statutory cross-reference to include a 1977 manslaughter conviction of a defendant for causing a death while intoxicated. The 1977 conviction was under the predecessor to the current *DUI* manslaughter statute. Nevertheless, under the current version of s. 907.041(4)(a), F.S., the list of offenses considered to be dangerous crimes, which includes "manslaughter," do not have a statutory cross-reference as was also the case in *White v. State*.

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. Procedural requirements of pretrial detention statute

In addition to establishing criteria for denying bail, s. 907.041, F.S., includes several procedural requirements, including the following:

- ▶ An arresting agency may hold the defendant up to 24 hours prior to the filing of a motion for pretrial detention by the state attorney.
- ▶ The court shall order detention only after a pretrial hearing.
- ▶ A hearing on the motion for pretrial detention must be held within 5 days, but the state attorney is allowed one continuance for good cause. A defendant may be held in jail until the hearing.
- ▶ If denied bail, failure to bring the defendant to trial within 90 days results in his release subject to any conditions of release, unless the trial delay was requested or caused by the defendant or his or her counsel.

E. 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 3.131(b), Fla.R.Crim.P., provides that unless the state has filed a motion for pretrial detention, the court shall conduct a hearing to determine pretrial release. Rule 3.131(b), Fla.R.Crim.P., sets out the conditions and criteria which the court is to consider, most of which track ss. 903.046 and 907.041, F.S.

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. Rule 3.132(a), Fla.R.Crim.P., provides that the state may file a motion seeking pretrial detention at the first appearance hearing. If the court determines that the motion is facially insufficient or no motion is filed, the court proceeds to determine the conditions of release pursuant to the provisions of Rule 3.131(b), Fla.R.Crim.P. If the court finds the state attorney’s motion facially sufficient, the court determines whether there is probable cause for the offense and if such a finding is made, the court may detain the defendant pending a final hearing on pretrial detention.

III. Effect of Proposed Changes:

A. DUI Manslaughter

This bill amends s. 907.041(4), F.S., to expressly authorize the court to order pretrial detention (deny bail) to a defendant who is charged with DUI manslaughter when it finds:

- ▶ a substantial probability that the defendant committed the crime, and
- ▶ the defendant poses a threat of harm to the community.

The bill specifies that the conditions that would support a finding by the court that the defendant poses the threat of harm to the community include, but are not limited to, any of the following:

- ▶ the defendant has previously been convicted of any DUI offense contained in s. 316.193, F.S., or a substantially similar offense from any other state;
- ▶ the defendant was driving with a suspended or revoked driver's license when the charged crime was committed; or
- ▶ the defendant's driver's license has been suspended or revoked prior to the commission of the charged crime.

The effect of this provision is to expressly authorize pretrial detention of DUI manslaughter.

Note: "Manslaughter" is currently one of 19 dangerous crimes listed in s. 907.041(4)(a), F.S., for which pretrial detention may be authorized under certain conditions. Although an appellate court has not ruled that pretrial detention may be ordered for a DUI manslaughter under s. 907.041(4)(a), F.S., the Florida Supreme Court's opinion in *White v. State*, could be logically extended to allow it under current law. 666 So. 2d 895 (Fla. 1996). In *White*, the Court construed the violent habitual offender statute, s. 775.084(1)(b)(1), F.S., which lists "manslaughter" without a statutory cross-reference to include a 1977 manslaughter conviction of a defendant for causing a death while intoxicated. The 1977 conviction was under the predecessor to the current DUI manslaughter statute. Nevertheless, under the current version of s. 907.041(4)(a), F.S., the list of offenses considered to be dangerous crimes, which includes "manslaughter," do not have a statutory cross-reference as was also the case in *White v. State*.

B. Elimination of Certain Requirements for Court Finding that Defendant Poses a Threat of Harm to the Community

Current law allows a court to order pretrial detention when certain conditions are met. A condition authorizing pretrial detention is a finding by the court that "[t]he defendant poses a threat of harm to the community." A court may so conclude when it finds:

- ▶ the defendant is presently accused of a dangerous crime;
- ▶ there is a substantial probability the defendant committed the crime;
- ▶ the circumstances of the crime indicate a disregard for safety of the community; and
- ▶ there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm.

In addition, the court must also find one of the following:

- a) The defendant has previously been convicted of a crime punishable by death or life imprisonment, *OR*
- b) The defendant has been convicted of an enumerated dangerous crime within 10 years, *OR*
- 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.

The bill deletes the requirement of finding either a), b), or c) above, in order to deny pretrial release. The effect is to expand the courts' ability to order pretrial detention and to deny bail for persons accused of dangerous crimes.

C. Creation of Two Additional Conditions Which Authorize Denial of Bail

The bill creates two new conditions, which will allow a court to deny bail prior to trial.

- ▶ The first condition allows pretrial detention when the defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed. (This condition was previously one of the additional conditions, see above, which factored into a finding that the defendant poses a threat of harm to the community.)
- ▶ The second condition allows pretrial detention when the defendant has violated one or more conditions of pretrial release or bond for the offense before the court which in turn supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons, or assure the presence of the accused at trial.

As to the second condition, current law already provides for denial of bail where “[t]he defendant has previously violated conditions of release” and “no further conditions of release are reasonably likely to assure the defendant’s appearance at subsequent proceedings.” It is not clear what the second condition created by the bill will add to current law. Moreover, the second condition could be viewed as more restrictive since it requires a finding of additional conditions beyond assurances of the defendant’s appearance at subsequent proceedings.

D. Elimination of the 90-day Cap

Under current law, any pretrial detention based upon a defendant’s potential harm to the community is limited to 90 days. If the defendant is not brought to trial in that time, he must be released on bail, subject to any release conditions, unless the trial delay was requested or caused by the defendant or his or her counsel.

The bill repeals this 90-day cap placed on pretrial detention. However, defendants maintain their right to a speedy trial. That is, every defendant has the right to trial in 60 days, upon demand.

Otherwise, the state must bring misdemeanor defendants to trial in 90 days, and felony defendants within 175 days. *See*, Rule 3.191, Fla.R.Crim.P.

E. Deletion of Language Requiring Detention Hearing

The bill deletes the following language in current statute: “[t]he court shall order detention only after a pretrial detention hearing.” Presumably, this deletion is stylistic or technical since the statute and bill contemplate the holding of a hearing and any other construction would violate the due process clause of the federal and state constitutions.

F. Pretrial Detention Motion

The bill specifies that nothing in s. 907.041, F.S., shall be construed to require the filing of a pretrial detention motion before a court may deny bail. It further specifies that the state may move for pretrial detention any time a defendant is in court for a bail hearing, without the necessity of filing a written motion. This contradicts Rule 3.132(a), Fla.R.Crim.P., which contemplates a “signed” state attorney motion “setting forth with particularity the grounds and the essential facts on which pretrial detention is sought and certifying that the state attorney has received testimony under oath supporting the grounds and the essential facts alleged in the motion.”

G. Cancellation of Bond

Section 903.31, F.S., is amended to require that a bond be “canceled” if, in any case, no formal charges have been brought against the defendant within 365 days after arrest. An exception is allowed and the bond remains in effect if the state shows “good cause.”

H. Repeal of Florida Rules of Criminal Procedure

The bill repeals Rules 3.131 and 3.132 of the Florida Rules of Criminal Procedure relating to pretrial release and pretrial detention, to the extent they are inconsistent with the bill. Both houses of the Legislature would have to pass section 6 of the bill by an affirmative two-thirds vote in order for it to take effect.

I. Effective Date of Bill Provisions

All provisions of the bill take effect on October 1, 2000. However, as noted above, section 6 of the bill will not take effect unless at least two-thirds of each house of the Legislature votes affirmatively for the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 14 of the Florida Constitution provides that “unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime shall be entitled to pretrial release on reasonable conditions.” This constitutional provision further states, “[i]f 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, the accused may be detained.”

This bill provides that the court may find a threat of harm to the community when it finds that the DUI manslaughter defendant was driving with a suspended or revoked driver’s license *or* when the defendant’s driver’s license has been suspended or revoked at least two times in the past. These provisions do not specify that the defendant’s driver’s license must have been suspended for a previous DUI or otherwise for being a bad driver. The provisions could be read to allow a court to make a finding of threat of community harm where a defendant’s license was suspended or revoked for reasons having nothing to do with a defendant’s dangerous driving, *e.g.*, failure to renew the license or failure to pay fines or insurance. In such a case, a court may find the bill’s provisions suspect under article I, s. 14, of the Florida Constitution.

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:

#1 by by Criminal Justice:

Deletes provision which authorizes a court to detain a defendant at a bail hearing without separate hearing or motion for pretrial detention and which authorizes the state to orally move for pretrial detention any time the defendant is before the court for a bail hearing.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
