

**STORAGE NAME:** h0205.cp

**DATE:** October 28, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME AND PUNISHMENT  
ANALYSIS**

**BILL #:** HB 205

**RELATING TO:** Trooper Robert Smith Act

**SPONSOR(S):** Representative Cantens

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CRIME AND PUNISHMENT
  - (2) CRIMINAL JUSTICE APPROPRIATIONS
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

HB 205 creates the "Trooper Robert Smith Act."

HB 205 amends s. 907.041, to authorize the court to order pretrial detention of a person charged with DUI manslaughter when it finds there is a substantial probability that the defendant committed the crime, and that the defendant poses a threat of harm to the community. The bill also specifies conditions that would support the court's finding that a defendant poses a threat of harm to the community.

The bill amends s. 907.041 to broaden court authority to order pretrial detention, for persons charged with dangerous crimes who pose a risk of physical harm to the community.

HB 205 also authorizes pretrial detention for any offense if a defendant has violated one or more conditions of pretrial release for the offense currently before the court which, in the discretion of the court, support 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.

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

The bill eliminates the requirement that pretrial detention orders be issued only pursuant to a written motion filed by the state attorney. HB 205 authorizes the court to permit the state, upon oral motion of the state attorney, to prove the need for pretrial detention anytime the defendant is before the court for a bail hearing.

In addition, HB 205 requires the cancellation of bond in any case where no formal charges have been brought against the defendant within 365 days of arrest.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The term "pretrial detention" refers to the holding of persons accused of committing crimes without bond or bail while their cases are pending.

**Constitutional Right To Pretrial Release/Bail**

Article I, Section 14 of the Florida Constitution provides that every person charged with a crime shall be entitled to pretrial release on reasonable conditions. It also provides for two exceptions to this right. The first exception is for persons charged with a capital offense or an offense punishable by life imprisonment when the proof of guilt is evident or the presumption is great. Article I, Section 14, Fla. Const.; State v. Arthur, 390 So. 2d 717 (Fla. 1980). The second exception applies when no conditions of release can:

- A. reasonably protect the community from risk of physical harm to persons,
- B. assure the presence of the accused at trial, **or**
- C. assure the integrity of the judicial process. [Article I, Section 14, Fla. Const.]

This constitutional provision is implemented by ss. 903.046 and 907.041, Florida Statutes. This later section specifies the circumstances under which a court is authorized to deny bond in order to carry out the purposes of A, B and C above, and will be discussed separately below.

A. Protecting the Community From Risk of Physical Harm to Persons

Under current law, a court can conclude that there is a substantial probability that a defendant committed a "dangerous crime," under circumstances which indicate a disregard for the safety of the community, find that there are **no** conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons, and the court is still **not** authorized to order the defendant to be held without bond. This result is due to a provision contained within s. 907.041(4)(b)4, which provides that in addition to all the factors stated above, a court must also find one of the following conditions present:

- 1. That the defendant has previously been convicted of a crime punishable by death or life imprisonment.
- 2. That the defendant has been convicted of a dangerous crime within 10 years of his or her arrest for the crime presently charged.
- 3. That the defendant was 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 bail on the basis that the defendant poses a threat of physical harm to persons, the defendant must be charged with a *dangerous crime*, listed in s. 907.041. The offenses listed as *dangerous crimes* are:

1. Arson;
2. Aggravated assault;
3. Aggravated battery;
4. Illegal use of explosives;
5. Child abuse or aggravated child abuse;
6. Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult;
7. Hijacking;
8. Kidnaping;
9. Homicide;
10. Manslaughter;
11. Sexual battery;
12. Robbery;
13. Carjacking;
14. Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years;
15. Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority;
16. Burglary of a dwelling;
17. Stalking and aggravated stalking;
18. Act of domestic violence as defined in s. 741.28; and
19. Attempting or conspiring to commit any such crime; and home-invasion robbery.

Currently, a court may not deny bail to a person charged with DUI manslaughter.<sup>1</sup>

In those instances where a defendant poses a threat of physical harm to persons, meets the additional requirements under s. 947.041(4)(b)4, and is detained; paragraph (4)(l) requires the defendant to be released if not brought to trial within 90 days, unless the delay was caused by the defendant or the defendant's counsel. This provision does **not** allow the state attorney to request the court to extend this 90-day period due to the nature or complexity of the case, or for any other good cause.

B. Assuring the Presence of the Accused at Trial

With regard to assuring the presence of the accused at trial, s 907.041(4)(b), authorizes the denial of bail to defendants when the court finds 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; **(or)**  
  
. . .
3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, 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; . . .

There is conflicting case law on the authority of the court to detain a defendant without bond due to a violation of the conditions of pretrial release. See, Paul v. Jenne, 728 So.2d 1167 (4th DCA, 1999) (holding that a trial court has no discretion to refuse readmission to bond upon a breach of a bond

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<sup>1</sup> DUI manslaughter occurs when, as a result of driving a vehicle while under the influence of alcohol or controlled substances (DUI), a person causes the death of any person. s. 316.193(3).

condition absent proof of the pretrial detention criteria; certifying a conflict with Houser v. Manning, 719 So.2d 307 (3rd DCA, 1998)).

### C. Assuring the Integrity of the Judicial Process

Section 907.041 also authorizes a court to deny bail when it finds that:

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;

### Considerations Regarding Pretrial Detention and Release

With regard to pretrial detention and release, s. 907.041(1), provides in part: "It is the intent of the Legislature that the primary consideration be the protection of the community from risk of physical harm to persons." Also factored in to the court's decision whether to order pretrial detention, are the considerations outlined in s. 903.046 which sets forth the Legislature's purpose of, and criteria for, determining bail. Section 903.046(1) 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.

When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court must consider factors such as:

- ▶ The nature and circumstances of the offense charged.
- ▶ The penalty provided by law for the offense charged.
- ▶ The weight of the evidence against the defendant.
- ▶ The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- ▶ The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- ▶ The nature and probability of danger the defendant's release poses to the community.
- ▶ The source of funds used to post bail.
- ▶ 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.
- ▶ The street value of any drug or controlled substance connected to or involved in the criminal charge.
- ▶ The nature and probability of intimidation and danger to victims
- ▶ Any other facts the court considers relevant [s. 903.046(2), and Fla.R. Crim. P. 3.131(b)(3)]

### Procedural Requirements For Determining Pretrial Detention and Release

Pursuant to Fla.R.Crim.P. 3.131, bail may not be denied (for offenses other than capital or life felonies) except pursuant to a motion for pretrial detention filed by the state attorney. A court may only order pretrial detention, after conducting a pretrial detention hearing. [s. 907.041(4)(e)]

When a person is arrested and taken into custody, he or she may be held for up to 24 hours prior to the filing of a motion for pretrial detention. [s. 907.041(4)(d)] Within that same 24 hour period, the arrested person must be brought before a judge for a "first appearance" hearing. At this proceeding, unless the state attorney has filed a motion for pretrial detention, the court must to determine conditions of pretrial release for the defendant. [Fla. R. Crim. P. 3.130].

The state attorney may file a motion seeking pretrial detention any time prior to trial. A hearing on pretrial detention must be held within 5 days of the filing of the motion for pretrial detention. [s. 907.041(4)(e) and Fla.R.Crim. P. 3.132(c)]. A defendant on a felony charge, may make a motion requesting the court to modify or reduce bail with a minimum of three hours notice provided to the state and county attorneys. [s. 903.035 and Fla.R. Crim. P. 3,131(d)]

The state attorney has the burden of proving the need for pretrial detention beyond a reasonable doubt. [Fla. R. Crim. P. 3.132(c)(1), See also s. 907.041(4)(f)].

## C. EFFECT OF PROPOSED CHANGES:

### Constitutional Right to Pretrial Release

#### A. Protecting the Community From Risk of Physical Harm to Persons

HB 205 authorizes a court to order a defendant held without bond (pretrial detained) when the court concludes that there is a substantial probability that the defendant committed a "dangerous crime," under circumstances which indicate a disregard for the safety of the community, and finds that there are **no** conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. The bill removes the additional conditions currently provided in s. 907.041(4)(b)4, which require that in addition to the above findings, the court must also find:

1. That the defendant has previously been convicted of a crime punishable by death or life imprisonment;
2. That the defendant has been convicted of a dangerous crime within 10 years of his or her arrest for the crime presently charged; or
3. That the defendant was 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 elimination of these three restrictions expands the court's ability to deny bail for defendants charged with *dangerous crimes* whom, the court concludes, cannot be safely released into the community.

HB 205 also amends s. 907.041, to authorize the court to order pretrial detention of a person charged with DUI manslaughter when it finds there is a substantial probability that the defendant committed the crime, and that the defendant poses a threat of harm to the community. The bill also specifies conditions that would support the court's finding that a defendant poses a threat of harm to the community as follows:

- a. The defendant has previously been convicted of a DUI.
- b. The defendant was driving with a suspended license when the offense was committed.
- c. The defendant has been found guilty of, or has had adjudication of guilt withheld for driving with a suspended or revoked license in violation of s. 322.24, F.S.

These conditions do not limit the court's ability to consider other factors that the court believes support a finding that a defendant poses a threat of harm to the community.

HB 205 also repeals the current 90-day limit placed on pretrial detention of defendants charged with dangerous crimes who pose a risk of physical harm to persons.

**B. Assuring the Presence of the Accused at Trial**

The bill authorizes pretrial detention when a defendant who is on supervision, or pretrial release for a **dangerous crime**, commits another offense. By contrast, present law authorizes pretrial detention if **both** the new offense and the offense for which the defendant is on supervision or pretrial release are “dangerous crimes.”

HB 205 also authorizes pretrial detention for **any** offense if a defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court which, in the discretion of the court, support 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.

**Procedural Requirements for Determining Pretrial Detention and Release**

HB 205 authorizes the court to permit the state, upon oral motion of the state attorney, to prove the need for pretrial detention anytime the defendant is before the court for a bail hearing. The court would no longer be required to grant pretrial release to a defendant in every instance where no written motion for pretrial detention has been filed by the state attorney.

The bill repeals Rule 3.131 & 3.132 of the Florida Rules of Criminal Procedure relating to pretrial release and pretrial detention to the extent that the rules are inconsistent with the bill. The repeal of the rules of criminal procedure takes effect only if the bill is passed by two-thirds of the Legislature. [Article V, Section 2(a), Florida Constitution].

**Cancellation of Bonds**

HB 205 requires the cancellation of bond in any case where no formal charges have been brought against the defendant within 365 days of arrest.

**D. SECTION-BY-SECTION ANALYSIS:**

See “Present Situation” and “Effect of Proposed Changes” sections above.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Last year, the Criminal Justice Estimating Conference determined the fiscal impact of HB 389 which was identical to this bill and found that the bill would not impact the state prison population. Because this bill increases the court's authority to hold defendants without bond, there will probably be an increased cost to counties due to more persons being pretrial detained in county jails.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Neither the three additional conditions provided in s. 947.041(4)(b)4 (See, Effect of Proposed Changes, p. 5) , nor the 90-day time limit for pretrial detention of dangerous defendants in s. 947.041(4)(l) are constitutionally required. Regardless of a defendant's pretrial detention or pretrial release status, he or she has the power, pursuant to Florida Rule of Criminal Procedure 3.191(b), to file a demand for speedy trial and be brought to trial within 60 days. Without a demand for speedy trial, the state must bring a defendant charged with a felony to trial within 175 days, unless the defendant waives his or her right to a speedy trial.

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B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

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David M. De La Paz

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