

By the Committee on Criminal Justice Appropriations and
Representatives Cantens, Fasano and Prieguez

1 A bill to be entitled
2 An act relating to pretrial detention;
3 providing a short title; amending s. 907.041,
4 F.S.; revising criteria for pretrial detention;
5 permitting the court to order pretrial
6 detention under specified circumstances when it
7 finds a substantial probability that a
8 defendant committed the charged crime of DUI
9 manslaughter as defined by s. 316.193, F.S.,
10 relating to driving under the influence, and
11 that the defendant poses the threat of harm to
12 the community; specifying certain conditions
13 that would support a finding that the defendant
14 poses the threat of harm to the community;
15 deleting requirement for additional court
16 findings for pretrial detention; permitting
17 pretrial detention for any violation of
18 conditions of pretrial release or bond which,
19 in the discretion of the court, supports a
20 finding that no condition of release can
21 reasonably protect the community from physical
22 harm, assure the presence of the accused at
23 trial, or assure the integrity of the judicial
24 process; deleting limitation upon detention
25 period when detention is based on threat of
26 harm to the community; repealing Rules 3.131
27 and 3.132, Florida Rules of Criminal Procedure,
28 relating to pretrial release and pretrial
29 detention, to the extent of inconsistency with
30 the act; amending s. 903.31, F.S.; providing
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1 for cancellation of bond under certain
2 circumstances; providing an effective date.

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

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6 Section 1. This act may be cited as the "Trooper
7 Robert Smith Act."

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9 Section 2. Section 907.041, Florida Statutes, is
amended to read:

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907.041 Pretrial detention and release.--

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12 (1) LEGISLATIVE INTENT.--It is the policy of this
13 state that persons committing serious criminal offenses,
14 posing a threat to the safety of the community or the
15 integrity of the judicial process, or failing to appear at
16 trial be detained upon arrest. However, persons found to meet
17 specified criteria shall be released under certain conditions
18 until proceedings are concluded and adjudication has been
19 determined. The Legislature finds that this policy of pretrial
20 detention and release will assure the detention of those
21 persons posing a threat to society while reducing the costs
22 for incarceration by releasing, until trial, those persons not
23 considered a danger to the community who meet certain
24 criteria. It is the intent of the Legislature that the
25 primary consideration be the protection of the community from
risk of physical harm to persons.

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27 (2) RULES OF PROCEDURE.--Procedures for pretrial
28 release determinations shall be governed by rules adopted by
the Supreme Court.

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30 (3) RELEASE ON NONMONETARY CONDITIONS.--It is the
31 intent of the Legislature to create a presumption in favor of
release on nonmonetary conditions for any person who is

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

8 (4) PRETRIAL DETENTION.--

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

- 11 1. Arson;
- 12 2. Aggravated assault;
- 13 3. Aggravated battery;
- 14 4. Illegal use of explosives;
- 15 5. Child abuse or aggravated child abuse;
- 16 6. Abuse of an elderly person or disabled adult, or
17 aggravated abuse of an elderly person or disabled adult;
- 18 7. Hijacking;
- 19 8. Kidnapping;
- 20 9. Homicide;
- 21 10. Manslaughter;
- 22 11. Sexual battery;
- 23 12. Robbery;
- 24 13. Carjacking;
- 25 14. Lewd, lascivious, or indecent assault or act upon
26 or in presence of a child under the age of 16 years;
- 27 15. Sexual activity with a child, who is 12 years of
28 age or older but less than 18 years of age, by or at
29 solicitation of person in familial or custodial authority;
- 30 16. Burglary of a dwelling;
- 31 17. Stalking and aggravated stalking;

1 18. Act of domestic violence as defined in s. 741.28;
2 and

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

5 (b) The court may order pretrial detention if it finds
6 a substantial probability, based on a defendant's past and
7 present patterns of behavior, the criteria in s. 903.046, and
8 any other relevant facts, that any of the following
9 circumstances exists:

10 1. The defendant has previously violated conditions of
11 release and that no further conditions of release are
12 reasonably likely to assure the defendant's appearance at
13 subsequent proceedings;

14 2. The defendant, with the intent to obstruct the
15 judicial process, has threatened, intimidated, or injured any
16 victim, potential witness, juror, or judicial officer, or has
17 attempted or conspired to do so, and that no condition of
18 release will reasonably prevent the obstruction of the
19 judicial process;

20 3. The defendant is charged with trafficking in
21 controlled substances as defined by s. 893.135, that there is
22 a substantial probability that the defendant has committed the
23 offense, and that no conditions of release will reasonably
24 assure the defendant's appearance at subsequent criminal
25 proceedings; or

26 4. The defendant is charged with DUI manslaughter, as
27 defined by s. 316.193, and that there is a substantial
28 probability that the defendant committed the crime and that
29 the defendant poses a threat of harm to the community;
30 conditions that would support a finding by the court pursuant
31 to this subparagraph that the defendant poses a threat of harm

1 to the community include, but are not limited to, any of the
2 following:
3 a. The defendant has previously been convicted of any
4 crime under s. 316.193, or of any crime in any other state or
5 territory of the United States that is substantially similar
6 to any crime under s. 316.193;
7 b. The defendant was driving with a suspended driver's
8 license when the charged crime was committed; or
9 c. The defendant has previously been found guilty of,
10 or has had adjudication of guilt withheld for, driving while
11 the defendant's driver's license was suspended or revoked in
12 violation of s. 322.34;
13 5.4. 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 6.c. The defendant was ~~is~~ on probation, parole, or
29 other release pending completion of sentence or on pretrial
30 release for a dangerous crime at the time ~~of~~ the current
31 offense was committed; or arrest.

1 7. The defendant has violated one or more conditions
2 of pretrial release or bond for the offense currently before
3 the court and the violation, in the discretion of the court,
4 supports a finding that no conditions of release can
5 reasonably protect the community from risk of physical harm to
6 persons or assure the presence of the accused at trial.

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

12 1. The nature and circumstances of the offense
13 charged;

14 2. The nature of any physical evidence seized and the
15 contents of any statements obtained from the defendant or any
16 witness;

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

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

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

27 (e) ~~The court shall order detention only after a~~
28 ~~pretrial detention hearing.~~ The pretrial detention hearing
29 shall be held within 5 days of the filing by the state
30 attorney of a complaint to seek pretrial detention. The
31 defendant may request a continuance. No continuance shall be

1 for longer than 5 days unless there are extenuating
2 circumstances. The defendant may be detained pending the
3 hearing. The state attorney shall be entitled to one
4 continuance for good cause.

5 (f) The state attorney has the burden of showing the
6 need for pretrial detention.

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

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

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

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1 ~~(i)(j)~~ A defendant convicted at trial following the
2 issuance of a pretrial detention order shall have credited to
3 his or her sentence, if imprisonment is imposed, the time the
4 defendant was held under the order, pursuant to s. 921.161.

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

8 Section 3. Rules 3.131 and 3.132, Florida Rules of
9 Criminal Procedure, are hereby repealed to the extent that
10 they are inconsistent with this act.

11 Section 4. Section 903.31, Florida Statutes, is
12 amended to read:

13 903.31 Canceling the bond.--

14 (1) Within 10 business days after the conditions of a
15 bond have been satisfied or the forfeiture discharged or
16 remitted, the court shall order the bond canceled and, if the
17 surety has attached a certificate of cancellation to the
18 original bond, shall furnish an executed certificate of
19 cancellation to the surety without cost. An adjudication of
20 guilt or innocence of the defendant shall satisfy the
21 conditions of the bond. The original appearance bond shall
22 expire 36 months after such bond has been posted for the
23 release of the defendant from custody. This subsection does
24 not apply to cases in which a bond has been declared
25 forfeited.

26 (2) The original appearance bond shall not be
27 construed to guarantee deferred sentences, appearance during
28 or after a presentence investigation, appearance during or
29 after appeals, conduct during or appearance after admission to
30 a pretrial intervention program, payment of fines, or
31 attendance at educational or rehabilitation facilities the

1 court otherwise provides in the judgment. If the original
2 appearance bond has been forfeited or revoked, the bond shall
3 not be reinstated without approval from the surety on the
4 original bond.

5 (3) In any case where no formal charges have been
6 brought against the defendant within 365 days after arrest,
7 the court shall order the bond canceled unless good cause is
8 shown by the state.

9 Section 5. This act shall take effect October 1, 2000,
10 except that section 3 shall take effect only if this act is
11 passed by the affirmative vote of two-thirds of the membership
12 of each house of the Legislature.

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