

Bill No. CS/HB 607, 1st Eng.

Amendment No.     

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Diaz-Balart moved the following amendment:

**Senate Amendment (with title amendment)**  
Delete everything after the enacting clause

and insert:

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

903.046 Purpose of and criteria for bail determination.--

(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:

(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 on the day of any required court proceeding in the case at issue ~~and breached a bond as~~

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

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

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

21 907.041 Pretrial detention and release.--

22 (3) RELEASE ON NONMONETARY CONDITIONS.--

23 (a) It is the intent of the Legislature to create a  
24 presumption in favor of release on nonmonetary conditions for  
25 any person who is granted pretrial release unless such person  
26 is charged with a dangerous crime as defined in subsection

27 (4). Such person shall be released on monetary conditions  
28 ~~only~~ if it is determined that such monetary conditions are  
29 necessary to assure the presence of the person at trial or at  
30 other proceedings, to protect the community from risk of  
31 physical harm to persons, to assure the presence of the

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1 accused at trial, or to assure the integrity of the judicial  
2 process.

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

7 1. The circumstances of the accused's family,  
8 employment, financial resources, character, mental condition,  
9 and length of residence in the community;

10 2. The accused's record of convictions, of appearances  
11 at court proceedings, of flight to avoid prosecution, or of  
12 failure to appear at court proceedings; and

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

16 (4) PRETRIAL DETENTION.--

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

- 19 1. Arson;
- 20 2. Aggravated assault;
- 21 3. Aggravated battery;
- 22 4. Illegal use of explosives;
- 23 5. Child abuse or aggravated child abuse;
- 24 6. Abuse of an elderly person or disabled adult, or  
25 aggravated abuse of an elderly person or disabled adult;
- 26 7. Hijacking;
- 27 8. Kidnapping;
- 28 9. Homicide;
- 29 10. Manslaughter;
- 30 11. Sexual battery;
- 31 12. Robbery;

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

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1 judicial process;

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

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

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

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

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

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

31 1. The nature and circumstances of the offense

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1 charged;

2           2. The nature of any physical evidence seized and the  
3 contents of any statements obtained from the defendant or any  
4 witness;

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

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

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

15           (f)~~(e)~~ The court shall order detention only after a  
16 pretrial detention hearing. The hearing shall be held within  
17 5 days of the filing by the state attorney of a complaint to  
18 seek pretrial detention. The defendant may request a  
19 continuance. No continuance shall be for longer than 5 days  
20 unless there are extenuating circumstances. The defendant may  
21 be detained pending the hearing. The state attorney shall be  
22 entitled to one continuance for good cause.

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

25           (h)~~(g)~~ The defendant is entitled to be represented by  
26 counsel, to present witnesses and evidence, and to  
27 cross-examine witnesses. The court may admit relevant  
28 evidence without complying with the rules of evidence, but  
29 evidence secured in violation of the United States  
30 Constitution or the Constitution of the State of Florida shall  
31 not be admissible. No testimony by the defendant shall be

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1 admissible to prove guilt at any other judicial proceeding,  
2 but such testimony may be admitted in an action for perjury,  
3 based upon the defendant's statements made at the pretrial  
4 detention hearing, or for impeachment.

5 (i)~~(h)~~ The pretrial detention order of the court shall  
6 be based solely upon evidence produced at the hearing and  
7 shall contain findings of fact and conclusions of law to  
8 support it. The order shall be made either in writing or  
9 orally on the record. The court shall render its findings  
10 within 24 hours of the pretrial detention hearing.

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

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

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

25 Section 3. Section 903.0471, Florida Statutes, is  
26 created to read:

27 903.0471 Violation of condition of pretrial  
28 release.--Notwithstanding s. 907.041, a court may, on its own  
29 motion, revoke pretrial release and order pretrial detention  
30 if the court finds probable cause to believe that the  
31 defendant committed a new crime while on pretrial release.

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

3           903.26 Forfeiture of the bond; when and how directed;  
4 discharge; how and when made; effect of payment.--

5           (2)(a) If there is a breach of the bond, the court  
6 shall declare the bond and any bonds or money deposited as  
7 bail forfeited. The clerk of the court shall mail a notice to  
8 the surety agent and surety company in writing within 5 days  
9 of the forfeiture. A certificate signed by the clerk of the  
10 court or the clerk's designee, certifying that the notice  
11 required herein was mailed on a specified date and accompanied  
12 by a copy of the required notice, shall constitute sufficient  
13 proof that such mailing was properly accomplished as indicated  
14 therein. If such mailing was properly accomplished as  
15 evidenced by such certificate, the failure of the surety  
16 agent, of a company, or of a defendant to receive such mail  
17 notice shall not constitute a defense to such forfeiture and  
18 shall not be grounds for discharge, remission, reduction, set  
19 aside, or continuance of such forfeiture. The forfeiture  
20 shall be paid within 60 ~~35~~ days of the date the notice was  
21 mailed.

22           (b) Failure of the defendant to appear at the time,  
23 date, and place of required appearance shall result in  
24 forfeiture of the bond. Such forfeiture shall be  
25 automatically entered by the clerk upon such failure to  
26 appear, and the clerk shall follow the procedures outlined in  
27 paragraph (a). However, the court may determine, in its  
28 discretion, in the interest of justice, that an appearance by  
29 the defendant on the same day as required does not warrant  
30 forfeiture of the bond; and the court may direct the clerk to  
31 set aside any such forfeiture which may have been entered.



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1 Any appearance by the defendant later than the required day  
2 constitutes forfeiture of the bond, and the court shall not  
3 preclude entry of such forfeiture by the clerk.

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

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

9 (a) State and county officials having custody of  
10 forfeited money shall deposit the money in the county fine and  
11 forfeiture fund;

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

14 (c) Officials having custody of bonds as authorized by  
15 s. 903.16 shall transmit the bonds to the clerk of the circuit  
16 court who shall sell them at market value and disburse the  
17 proceeds as provided in paragraphs (a) and (b).

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

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

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27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete everything before the enacting clause

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31 and insert:

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A bill to be entitled  
An act relating to pretrial release; amending  
s. 903.046, F.S.; revising criteria for bail  
determination; amending s. 907.041, F.S.;  
prohibiting persons charged with dangerous  
crimes from being placed on pretrial release on  
nonmonetary conditions at first appearance  
hearings; providing criteria for pretrial  
release on nonmonetary conditions; creating s.  
903.0471, F.S.; authorizing a court to order  
pretrial detention for persons on pretrial  
release who commit new crimes under certain  
circumstances; amending s. 903.26, F.S.;  
revising time period for bond forfeiture  
payment and notice; repealing Rules 3.131 and  
3.132, Florida Rules of Criminal Procedure,  
relating to pretrial release and pretrial  
detention, to the extent those rules are  
inconsistent with this act; providing an  
effective date.