

STORAGE NAME: h0607.cj

DATE: March 3, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 607

RELATING TO: Pretrial Release

SPONSOR(S): Representative Cantens

TIED BILL(S):

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

- (1) CRIME & PUNISHMENT YEAS 6 NAYS 1
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 607 gives a trial court the authority, on its own motion, to revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release and no conditions of release can reasonably protect the community from the risk of physical harm, assure the presence of the accused at trial or assure the integrity of the judicial process.

When determining whether to release a defendant on bail or other conditions, and what bail or those conditions may be, the bill requires the court to consider, along with other factors currently in statute, whether there is probable cause to believe that the defendant committed a new crime while on pretrial release

The bill also provides that the presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release does not apply to a defendant who is charged with a "dangerous crime". The bill provides that no person charged with a dangerous crime shall be granted nonmonetary pretrial release at a first appearance hearing.

The bill provides that no person shall be released on nonmonetary conditions under the supervision of a pretrial release service unless the service certifies to the court that it has investigated or otherwise verified: 1) the circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community; 2) the accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings and; 3) other facts necessary to assist the court in its determination of the indigency of the accused and whether she or he should be released under the supervision of the service.

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:

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.]

Pretrial Detention

Section 907.041(4)(b) places restrictions on a trial court's authority to order pretrial detention which are not required by the constitution by providing that a trial court may order pretrial detention only if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046 and any other relevant facts that:

- a. The defendant has previously violated conditions of release and that no further conditions of release are likely to assure the defendant's appearance at subsequent proceedings; or
- b. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror or judicial officer and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings; or
- c. The defendant is charged with trafficking in controlled substances, that there is a substantial probability that the defendant has committed the offense, and that there are no conditions of pretrial release which will reasonably assure the defendant's appearance at subsequent criminal proceedings; or

d. The defendant poses the threat of harm to the community;

The trial court may conclude that the defendant poses a threat of harm to the community if it finds each of the following:

1. The defendant is currently charged with a "dangerous crime." The offenses listed as *dangerous crimes* are the following crimes or an attempt to commit the following: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; hijacking; kidnaping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; 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; burglary of a dwelling; stalking and aggravated stalking; domestic violence as defined in s. 741.28; and home-invasion robbery. s. 907.041(4)(a), F.S.
2. There is a substantial probability that the defendant committed the charged crime.
3. That the factual circumstances of the crime indicate a disregard for the safety of the community.
4. That there are no conditions of pretrial release reasonably sufficient to protect the community from risk of physical harm to persons.
5. Additionally, the court must find one of the following factors:
 - 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 crime.

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.

According to s. 903.046(2), 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:

- 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.
- e. The nature and probability of danger 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.
- i. The nature and probability of intimidation and danger to victims
- j. 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 within this time frame, even if the defendant is charged with a dangerous crime, the court must determine conditions of pretrial release for the defendant. [Fla. R. Crim. P. 3.130]. Notwithstanding the fact that a defendant could be charged with a dangerous crime, s. 907.041(3) currently creates a statutory presumption in favor of pretrial release with no monetary conditions.

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)].

Conditions of Pretrial Release

Section 903.047 provides that as a condition of pretrial release, the court shall require that, the defendant refrain from criminal activity of any kind and the defendant refrain from any contact of any type with the victim except through pretrial discovery.

Revocation of Pretrial Release

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 (Fla. 4th DCA 1999) (holding that a trial court has no discretion to refuse readmission to bond upon a breach of a bond condition absent proof of the pretrial detention criteria; certifying a conflict with Houser v. Manning, 719 So.2d 307 (Fla. 3rd DCA 1998)).

C. EFFECT OF PROPOSED CHANGES:

Considerations Regarding Pretrial Detention and Release

The bill amends section 903.046 to add a factor to those the trial court must consider when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be. The additional factor is whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.

Release on Nonmonetary Conditions

The bill also amends section 907.041 to provide that it is the intent of the legislature to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.

The bill also adds a paragraph to s. 907.041 which states that no person shall be released on nonmonetary conditions under the supervision of a pretrial release service, unless the service certifies to the court that it has investigated or otherwise verified the following:

1. The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community.
2. The accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings.
3. Other facts necessary to assist the court in its determination of the indigency of the accused and whether she or he should be released under the supervision of the service.

The bill additionally provides that no person charged with a dangerous crime shall be granted nonmonetary pretrial release at a first appearance hearing.

Revocation of Pretrial Release

The bill creates 903.041 which provides that notwithstanding s. 907.041, a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release and, in the discretion of the court, the facts and circumstances support a finding that no conditions of release can reasonably protect the community from the risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process.

The bill also provides that Florida Rules of Criminal Procedure 3.131 and 3.132 are repealed to the extent that they are inconsistent with this act.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amending s. 903.046 relating to criteria for pretrial release.

Section 2: Amending s. 907.041 relating to release on nonmonetary conditions and pretrial detention.

Section 3: Creates s. 903.0471; authorizing revocation of pretrial release and ordering of pretrial detention under certain circumstances.

Section 4: Provides that Florida Rules of Criminal Procedure 3.131 and 3.132 are repealed to the extent they are inconsistent with the act.

Section 5: Provides effective date; provides that section 4 shall take effect only if the act is passed by a 2/3 vote of the legislature.

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:

See fiscal comments.

D. FISCAL COMMENTS:

This bill will not have an impact on the state prison population. To the extent that the bill gives a trial court more discretion to revoke pretrial release and impose pretrial detention when a defendant commits a new crime while on pretrial release, there will 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Villalobos offered an amendment at the February 7, 2000 meeting of the Committee on Crime & Punishment. This amended paragraph (d) of subsection 2 of section 903.046. The relevant part of the paragraph currently provides that any defendant who previously had willfully and knowingly failed to appear and breached a bond as specified in s. 903.26 and who was arrested at any time following forfeiture shall not be eligible for a

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recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater.

The amendment changes the paragraph to provide that any defendant who had failed to appear on the day of any required court proceeding in the case at issue and who was later arrested 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 \$2000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. This removes the requirement that a failure to appear be knowing and willful in order for a defendant to be ineligible to be released on a recognizance bond. The amendment also adds a sentence to the paragraph which provides that "notwithstanding, the court shall have discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear." The amendment was approved by the committee and is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

Prepared by:

Trina Kramer

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

Susan M. Mosychuk

Staff Director:

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