

By Senator Sebesta

20-313A-00

1 A bill to be entitled
 2 An act relating to pretrial detention and
 3 release; amending s. 907.041, F.S.; providing
 4 additional factors for the court to consider in
 5 establishing the amount of bail and type of
 6 bond required of a defendant; providing for
 7 counties to establish a pretrial services
 8 program for the purpose of screening persons
 9 arrested for crimes; authorizing the court to
 10 include specified conditions of supervision for
 11 defendants in a county that establishes a
 12 pretrial services program; requiring each
 13 pretrial services program to provide an annual
 14 report to the chief judge of the judicial
 15 circuit; requiring that the Conference of
 16 Circuit Judges of Florida submit an annual
 17 report to the Legislature; providing an
 18 effective date.

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

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 22 Section 1. Section 907.041, Florida Statutes, is
 23 amended to read:

24 907.041 Pretrial detention and release.--

25 (1) LEGISLATIVE INTENT.--It is the policy of this
 26 state that persons committing serious criminal offenses,
 27 posing a threat to the safety of the community or the
 28 integrity of the judicial process, or failing to appear at
 29 trial be detained upon arrest. However, persons found to meet
 30 specified criteria shall be released under certain conditions
 31 until proceedings are concluded and adjudication has been

1 determined. The Legislature finds that this policy of pretrial
2 detention and release will assure the detention of those
3 persons posing a threat to society while reducing the costs
4 for incarceration by releasing, until trial, those persons not
5 considered a danger to the community who meet certain
6 criteria. It is the intent of the Legislature that the
7 primary consideration be the protection of the community from
8 risk of physical harm to persons.

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

12 (3) RELEASE ON NONMONETARY CONDITIONS.--

13 (a) It is the intent of the Legislature to create a
14 presumption in favor of release on nonmonetary conditions for
15 any person who is granted pretrial release. Such person shall
16 be released on monetary conditions only if it is determined
17 that such monetary conditions are necessary to assure the
18 presence of the person at trial or at other proceedings, to
19 protect the community from risk of physical harm to persons,
20 to assure the presence of the accused at trial, or to assure
21 the integrity of the judicial process.

22 (b) In determining the amount of bail and the type of
23 bond to be furnished by the defendant, the court shall
24 consider the following:

- 25 1. The defendant's past and present residences;
- 26 2. The defendant's employment status and history;
- 27 3. The nature and extent of the defendant's family
28 relationships;
- 29 4. The identity of persons who agree to assist the
30 defendant in attending court at the proper time;

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1 5. The nature of the current offense and the apparent
2 probability of conviction and the likely sentence;

3 6. The defendant's prior criminal record, if any, and,
4 if the defendant has previously been released pending trial,
5 whether the defendant appeared as required;

6 7. Any facts that indicate the possibility of
7 violations of law if the defendant is released without
8 restrictions;

9 8. Any facts that indicate a likelihood that the
10 defendant will intimidate or harass a witness; and

11 9. Any facts that indicate the defendant has strong
12 ties to the community and is not likely to flee the
13 jurisdiction.

14 (4) PRETRIAL DETENTION.--

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

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

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1 14. Lewd, lascivious, or indecent assault or act upon
2 or in presence of a child under the age of 16 years;

3 15. Sexual activity with a child, who is 12 years of
4 age or older but less than 18 years of age, by or at
5 solicitation of person in familial or custodial authority;

6 16. Burglary of a dwelling;

7 17. Stalking and aggravated stalking;

8 18. Act of domestic violence as defined in s. 741.28;

9 and

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

12 (b) The court may order pretrial detention if it finds
13 a substantial probability, based on a defendant's past and
14 present patterns of behavior, the criteria in s. 903.046, and
15 any other relevant facts, that:

16 1. The defendant has previously violated conditions of
17 release and that no further conditions of release are
18 reasonably likely to assure the defendant's appearance at
19 subsequent proceedings;

20 2. The defendant, with the intent to obstruct the
21 judicial process, has threatened, intimidated, or injured any
22 victim, potential witness, juror, or judicial officer, or has
23 attempted or conspired to do so, and that no condition of
24 release will reasonably prevent the obstruction of the
25 judicial process;

26 3. The defendant is charged with trafficking in
27 controlled substances as defined by s. 893.135, that there is
28 a substantial probability that the defendant has committed the
29 offense, and that no conditions of release will reasonably
30 assure the defendant's appearance at subsequent criminal
31 proceedings; or

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

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

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

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

19 (c) When a person charged with a crime for which
20 pretrial detention could be ordered is arrested, the arresting
21 agency shall promptly notify the state attorney of the arrest
22 and shall provide the state attorney with such information as
23 the arresting agency has obtained relative to:

24 1. The nature and circumstances of the offense
25 charged;

26 2. The nature of any physical evidence seized and the
27 contents of any statements obtained from the defendant or any
28 witness;

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

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

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

9 (e) The court shall order detention only after a
10 pretrial detention hearing. The hearing shall be held within
11 5 days of the filing by the state attorney of a complaint to
12 seek pretrial detention. The defendant may request a
13 continuance. No continuance shall be for longer than 5 days
14 unless there are extenuating circumstances. The defendant may
15 be detained pending the hearing. The state attorney shall be
16 entitled to one continuance for good cause.

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

19 (g) The defendant is entitled to be represented by
20 counsel, to present witnesses and evidence, and to
21 cross-examine witnesses. The court may admit relevant
22 evidence without complying with the rules of evidence, but
23 evidence secured in violation of the United States
24 Constitution or the Constitution of the State of Florida shall
25 not be admissible. No testimony by the defendant shall be
26 admissible to prove guilt at any other judicial proceeding,
27 but such testimony may be admitted in an action for perjury,
28 based upon the defendant's statements made at the pretrial
29 detention hearing, or for impeachment.

30 (h) The pretrial detention order of the court shall be
31 based solely upon evidence produced at the hearing and shall

1 contain findings of fact and conclusions of law to support it.
2 The order shall be made either in writing or orally on the
3 record. The court shall render its findings within 24 hours of
4 the pretrial detention hearing.

5 (i) If ordered detained pending trial pursuant to
6 subparagraph (b)4., the defendant may not be held for more
7 than 90 days. Failure of the state to bring the defendant to
8 trial within that time shall result in the defendant's release
9 from detention, subject to any conditions of release, unless
10 the trial delay was requested or caused by the defendant or
11 his or her counsel.

12 (j) A defendant convicted at trial following the
13 issuance of a pretrial detention order shall have credited to
14 his or her sentence, if imprisonment is imposed, the time the
15 defendant was held under the order, pursuant to s. 921.161.

16 (k) The defendant shall be entitled to dissolution of
17 the pretrial detention order whenever the court finds that a
18 subsequent event has eliminated the basis for detention.

19 (5) PRETRIAL SERVICES PROGRAM.--Any county may
20 establish a pretrial services program to assist the county
21 court or circuit court within the county.

22 (a) The pretrial service program shall establish a
23 procedure for screening persons who are detained due to an
24 arrest for an alleged crime. The program shall provide
25 information to the judicial officer who sets the amount of
26 bail and type of bond. The program shall provide information
27 that provides the court with the ability to make the most
28 appropriate initial bond decision, which is based upon facts
29 that relate to the defendant's risk of danger to the community
30 and the defendant's risk of failure to appear before the
31 court.

1 (b) The program shall make all reasonable attempts to
2 provide the court with information that is appropriate to each
3 defendant.

4 (c) The court may include different methods and levels
5 of community-based supervision as a condition of pretrial
6 release under the pretrial services program. The court may use
7 established methods of supervision for a defendant who is
8 released before trial in order to decrease unnecessary
9 pretrial incarceration. Such supervision may require one or
10 more of the following conditions:

11 1. Periodic telephone contact with the defendant.

12 2. Periodic visits by the defendant to the offices of
13 the pretrial services program.

14 3. Periodic visits to the defendant's home by
15 personnel from the pretrial services program.

16 4. Periodic drug testing of the defendant.

17 5. Mental-health treatment or substance-abuse
18 treatment for the defendant, including residential treatment.

19 6. Domestic-violence counseling for the defendant.

20 7. Electronic monitoring of the defendant.

21 8. Assignment of the defendant to a pretrial
22 work-release program.

23 9. Any additional condition the court may impose.

24 (d) Each pretrial services program established under
25 this subsection shall provide an annual report to the chief
26 judge of the judicial circuit that it serves. The Conference
27 of Circuit Judges of Florida shall submit an annual report to
28 the President of the Senate and the Speaker of the House of
29 Representatives which must include, but need not be limited
30 to:

31 1. The number of interviews conducted with defendants.

1 2. The number of defendants released under pretrial
2 release supervision.

3 3. The number of defendants under pretrial release
4 supervision who failed to appear.

5 4. Any additional information requested by the chief
6 judge of the judicial circuit served by the pretrial services
7 program.

8 Section 2. This act shall take effect July 1, 2000.

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11 SENATE SUMMARY

12 Requires that courts consider certain additional factors
13 when establishing the amount of bail and type of bond
14 required to be furnished by a defendant. Authorizes
15 counties to establish pretrial services programs to
16 screen defendants. Requires that each pretrial services
17 program submit annual reports to the chief judge of the
18 judicial circuit. Requires that the Conference of Circuit
19 Judges of Florida submit annual reports to the
20 Legislature.