

By the Committee on Criminal Justice; and Senator Campbell

307-1969-03

1 A bill to be entitled
2 An act relating to pretrial release; amending
3 s. 903.02, F.S.; providing that any judge
4 setting or granting bail shall set a separate
5 bail amount for each charge or offense;
6 amending s. 903.046, F.S.; providing that a
7 defendant forfeits the right to a presumption
8 in favor of release on nonmonetary conditions
9 if charged with a second or subsequent felony
10 within a certain time period; amending s.
11 903.047, F.S.; providing for standard
12 conditions of pretrial release without the
13 trial judge stating such conditions on the
14 record; requiring a defendant to comply with
15 all conditions of a pretrial release program;
16 amending s. 903.26, F.S.; providing that
17 failure of the state attorney to institute
18 extradition proceedings or extradite the
19 principal on a bail bond, after the surety's
20 written agreement to pay actual transportation
21 costs, exonerates the surety; amending s.
22 903.27, F.S.; providing that in cases in which
23 the bond forfeiture has been discharged by the
24 court, the amount of the judgment may not
25 exceed the amount of the unpaid fees or costs
26 upon which the discharge had been conditioned;
27 amending s. 903.31, F.S.; providing that the
28 clerk of court shall furnish an executed
29 certificate of cancellation to the surety;
30 providing that the original appearance bond
31 does not guarantee the defendant's conduct or

1 appearance in court at any time under certain
2 circumstances; amending s. 907.041, F.S.;
3 requiring a pretrial release service to certify
4 to the court in writing that it has conducted
5 certain investigations and verified specified
6 conditions before an accused is released on
7 nonmonetary conditions; revising requirements
8 for the pretrial release of a person charged
9 with a dangerous crime; providing an effective
10 date.

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

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14 Section 1. Subsection (4) is added to section 903.02,
15 Florida Statutes, to read:

16 903.02 Actions with respect to denial or conditions of
17 bail or amount of bond prohibited; "court" defined.--

18 (4) Any judge setting or granting monetary bail shall
19 set a separate and specific bail amount for each charge or
20 offense. When bail is posted, each charge or offense requires
21 a separate bond.

22 Section 2. Subsection (3) is added to section 903.046,
23 Florida Statutes, to read:

24 903.046 Purpose of and criteria for bail
25 determination.--

26 (3) If a defendant is charged with a second or
27 subsequent felony within 3 years after the date of a prior
28 felony charge, regardless of whether a conviction was entered,
29 the defendant forfeits the right to a presumption in favor of
30 release on nonmonetary conditions as provided in s. 907.041.

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1 Section 3. Subsection (1) of section 903.047, Florida
2 Statutes, is amended to read:

3 903.047 Conditions of pretrial release.--

4 (1) As a condition of pretrial release, whether such
5 release is by surety bail bond or recognizance bond or in some
6 other form, ~~the court shall require that:~~

7 (a) The defendant shall refrain from criminal activity
8 of any kind; and

9 (b) The defendant shall refrain from any contact of
10 any type with the victim, except through pretrial discovery
11 pursuant to the Florida Rules of Criminal Procedure; and-

12 (c) The defendant shall comply with all conditions of
13 pretrial release.

14 Section 4. Paragraph (d) is added to subsection (5) of
15 section 903.26, Florida Statutes, to read:

16 903.26 Forfeiture of the bond; when and how directed;
17 discharge; how and when made; effect of payment.--

18 (5) The court shall discharge a forfeiture within 60
19 days upon:

20 (d) Failure of the state attorney to institute
21 extradition proceedings or extradite the principal on a bail
22 bond, after the surety has agreed in writing to pay actual
23 transportation costs, exonerates the surety, and any
24 forfeiture or judgment is set aside or vacated and any payment
25 by the surety of a forfeiture or judgment is remitted in full.

26 Section 5. Subsection (1) of section 903.27, Florida
27 Statutes, is amended to read:

28 903.27 Forfeiture to judgment.--

29 (1) If the forfeiture is not paid or discharged by
30 order of a court of competent jurisdiction within 60 days and
31 the bond is secured other than by money and bonds authorized

1 in s. 903.16, the clerk of the circuit court for the county
2 where the order was made shall enter a judgment against the
3 surety for the amount of the penalty and issue execution.
4 However, in any case in which the bond forfeiture has been
5 discharged by the court of competent jurisdiction conditioned
6 upon the payment by the surety of certain costs or fees as
7 allowed by statute, the amount for which judgment may be
8 entered may not exceed the amount of the unpaid fees or costs
9 upon which the discharge had been conditioned. Judgment for
10 the full amount of the forfeiture shall not be entered if
11 payment of a lesser amount will satisfy the conditions to
12 discharge the forfeiture. Within 10 days, the clerk shall
13 furnish the Department of Insurance with a certified copy of
14 the judgment docket and shall furnish the surety company at
15 its home office a copy of the judgment, which shall include
16 the power of attorney number of the bond and the name of the
17 executing agent. If the judgment is not paid within 35 days,
18 the clerk shall furnish the Department of Insurance and the
19 sheriff of the county in which the bond was executed, or the
20 official responsible for operation of the county jail, if
21 other than the sheriff, two copies of the judgment and a
22 certificate stating that the judgment remains unsatisfied.
23 When and if the judgment is properly paid or an order to
24 vacate the judgment has been entered by a court of competent
25 jurisdiction, the clerk shall immediately notify the sheriff,
26 or the official responsible for the operation of the county
27 jail, if other than the sheriff, and the Department of
28 Insurance, if the department had been previously notified of
29 nonpayment, of such payment or order to vacate the judgment.
30 The clerk shall also immediately prepare and record in the
31 public records a satisfaction of the judgment or record the

1 order to vacate judgment. If the defendant is returned to the
2 county of jurisdiction of the court, whenever a motion to set
3 aside the judgment is filed, the operation of this section is
4 tolled until the court makes a disposition of the motion.

5 Section 6. Section 903.31, Florida Statutes, is
6 amended to read:

7 903.31 Canceling the bond.--

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

20 (2) The original appearance bond does ~~shall~~ not be
21 ~~construed to~~ guarantee deferred sentences, appearance during
22 or after a presentence investigation, appearance during or
23 after appeals, ~~conduct during or appearance after admission to~~
24 ~~a pretrial intervention program,~~ payment of fines, or
25 attendance at educational or rehabilitation facilities the
26 court otherwise provides in the judgment. If the original
27 appearance bond has been forfeited or revoked, the bond shall
28 not be reinstated without approval from the surety on the
29 original bond.

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1 (3) The original appearance bond does not guarantee
2 the defendant's conduct or appearance in court at any time
3 after:

4 (a) The defendant enters a plea of guilty or no
5 contest;

6 (b) The defendant enters into an agreement for
7 deferred prosecution or agrees to enter a pretrial
8 intervention program;

9 (c) The defendant is acquitted;

10 (d) The defendant is adjudicated guilty;

11 (e) Adjudication of guilt of the defendant is
12 withheld; or

13 (f) The defendant is found guilty by a judge or jury.

14 ~~(4)~~ In any case where no formal charges have been
15 brought against the defendant within 365 days after arrest,
16 the court shall order the bond canceled unless good cause is
17 shown by the state.

18 Section 7. Subsection (3) and paragraphs (a) and (b)
19 of subsection (4) of section 907.041, Florida Statutes, are
20 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 if
28 it is determined that such monetary conditions are necessary
29 to assure the presence of the person at trial or at other
30 proceedings, to protect the community from risk of physical
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1 | harm to persons, to assure the presence of the accused at
2 | trial, or to assure the integrity of the judicial process.

3 | (b) A No person may not be accepted for release shall
4 | ~~be released~~ on nonmonetary conditions under the supervision of
5 | a pretrial release service, unless the service certifies in
6 | writing, and has provided a report to the court for review,
7 | that it has investigated or otherwise verified:

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

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

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

17 | (4) PRETRIAL DETENTION.--

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

20 | 1. Arson;

21 | 2. Aggravated assault;

22 | 3. Aggravated battery;

23 | 4. Illegal use of explosives;

24 | 5. Child abuse or aggravated child abuse;

25 | 6. Abuse of an elderly person or disabled adult, or
26 | aggravated abuse of an elderly person or disabled adult;

27 | 7. Aircraft piracy;

28 | 8. Kidnapping;

29 | 9. Homicide;

30 | 10. Manslaughter;

31 | 11. Sexual battery;

- 1 12. Robbery;
- 2 13. Carjacking;
- 3 14. Lewd, lascivious, or indecent assault or act upon
- 4 or in presence of a child under the age of 16 years;
- 5 15. Sexual activity with a child, who is 12 years of
- 6 age or older but less than 18 years of age, by or at
- 7 solicitation of person in familial or custodial authority;
- 8 16. Burglary of a dwelling;
- 9 17. Stalking and aggravated stalking;
- 10 18. Act of domestic violence as defined in s. 741.28;
- 11 19. Home invasion robbery;
- 12 20. Act of terrorism as defined in s. 775.30; and
- 13 21. Attempting or conspiring to commit any such crime.
- 14 (b) A ~~No~~ person charged with a dangerous crime may not
- 15 ~~shall~~ be granted nonmonetary pretrial release at a first
- 16 appearance hearing to a pretrial release service unless the
- 17 requirements of paragraph (3)(b) have been satisfied; however,
- 18 the court shall retain the discretion to release an accused on
- 19 electronic monitoring or on recognizance bond if the findings
- 20 on the record of facts and circumstances warrant such a
- 21 release.

22 Section 8. This act shall take effect July 1, 2003.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1020

- 4 - The CS amends s. 903.02, F.S., to require a judge setting
5 monetary bail to set a separate bail amount for each
6 charge, which would require a separate bond when bail is
7 posted.
8 - The CS amends s. 903.046, F.S., so that a defendant who
9 has been charged with a second or subsequent felony
10 within three years of a prior felony charge forfeits his
11 or her right to the presumption in favor of release on
12 nonmonetary conditions, as set forth in s. 907.041, F.S.
13 - The CS amends s. 903.047, F.S., to require that as a
14 condition of pretrial release the defendant comply with
15 all conditions of pretrial release.
16 - The CS amends s. 903.26, F.S., to provide that the surety
17 is exonerated and any forfeiture or judgment is set
18 aside, and any payment previously made is remitted to the
19 surety, where the surety has agreed to pay transportation
20 costs of extradition of a defendant but the state fails
21 to institute extradition proceedings.
22 - The CS amends s. 903.27, F.S., to limit the amount of a
23 judgment entered against a surety to the fees and costs,
24 where the bond forfeiture has been conditioned upon the
25 payment of those fees and costs.
26 - The CS amends s. 903.31, F.S., to delete the requirement
27 of a court order as authority for the clerk of the court
28 to cancel a bond. It also deletes some language from (2),
29 and creates a new (3) which outlines the limits of the
30 guarantee of an original appearance bond, apparently in
31 response to court rulings to the contrary.
- The CS reinserts existing language in s. 907.041(4)(b),
F.S., which gives the court some discretion in making a
pretrial release determination.