

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1185 Relating to Bail and Pretrial Release
SPONSOR(S): Ambler
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	_____	Maynard	De La Paz
2) Public Safety & Crime Prevention	_____	_____	_____
3) Judiciary	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, all persons detained for criminal offenses have a right to a first appearance before a judge within 24 hours of their arrest. Fla. R. Crim. Pro. 3.130(a). Among other responsibilities, the judge at first appearance is authorized to determine the amount of any monetary bail that may be required and to execute an unsecured appearance bond in the amount specified by the judge. Fla R. Crim. Pro. 3.131(b). The judge present at a first appearance hearing is not necessarily the same judge which issued the *capias* or arrest warrant and set the bond amount. The setting of a bond amount pursuant to an arrest warrant is a legal *ex parte* communication between law enforcement and the court. Currently, such bond amounts are reviewable by the first appearance judge, even if the judge issuing the warrant orders that the first appearance judge not review the bond amount or other conditions of pretrial release.

HB 1185 would create a new section of ch. 903, F.S., which would specifically prevent the judge at first appearance from reducing the bond amount set by the judge that issued an arrest warrant. The bill provides three exceptions: 1.) the judge issuing the warrant indicated that the matter of bail may be reconsidered at the first appearance hearing, 2.) the judge who issued the warrant is also the first appearance judge, or 3.) the judge at first appearance is the judge to whom the case has been assigned.

HB 1185 also amends s. 903.0471, F.S., to permit a court to use, in its discretion, an affidavit of a law enforcement officer as probable cause that a defendant on pretrial release has committed a new crime, as opposed to requiring a hearing.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1185.ps.doc
DATE: March 24, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Currently, all persons detained for criminal offenses have a right to a first appearance before a judge within 24 hours of their arrest. Fla.R. Crim. Pro. 3.130(a). At the first appearance, the judge informs the defendant of the charges against him and provides him with a copy of the complaint. Fla. R. Crim. Pro. 3.130(b). The court also inquires as to whether the defendant has obtained counsel or qualifies for appointment of representation. Fla. R. Crim Pro. 3.130(c) The first appearance court also conducts a hearing to determine pretrial release. Fla. R. Crim Pro 3.130(d) and 3.131(b).

Every person has the right to pretrial release, unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. Fla R. Crim. Pro. 3.131(a) However, the court is to ensure that the conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, and assure the integrity of the judicial process. Fla. R. Crim. Pro. 3.131(a). The judge at first appearance is authorized to determine the amount of any monetary bail that may be required and to execute an unsecured appearance bond in the amount specified by the judge. Fla R. Crim. Pro. 3.131(b).

The judge present at a first appearance is not necessarily the same judge which issued the capias or arrest warrant and set the bond amount. The setting of a bond amount pursuant to an arrest warrant is a legal exparte communication between law enforcement and the court. Currently, such bond amounts are reviewable by the first appearance judge, even if the judge issuing the warrant orders that the first appearance judge not review the bond amount or other conditions of pretrial release. Under s. 903.02, F.S., “[n]o judge of a court of equal or inferior jurisdiction may remove a condition of bail or reduce the amount of bond required, unless such judge: (a) Imposed the conditions of bail or set the amount of bond required; (b) Is the chief judge of the circuit in which the defendant is to be tried; (c) Has been assigned to preside over the criminal trial of the defendant; or (d) Is the designee of the chief judge and a judge has not yet been assigned to the criminal trial.” This statute would seem to prevent a first appearance judge reviewing the bond amount set by another judge from reducing the defendant’s bond. Fla. R. Crim. Pro. 3.131(d) mirrors the language of the statute, but rather than applying any court of “equal or inferior jurisdiction” the Rule applies only to a subsequent application for the setting or modification of bail.

The Florida Supreme Court specifically addressed the question of whether a judge could prevent the first appearance judge from modifying the bond amount set on the offense for which an arrest warrant had been issued in State v. Norris, 768 So.2d 1070 (Fla 2000). The court held that a judge issuing an arrest warrant may not preclude the first appearance judge from modifying the endorsed bail condition on the arrest warrant. The court reasoned that the first appearance judge was still charged by the rule to “consider all the relevant factors to determine what form of release is necessary to assure the

defendant's appearance. If a monetary bail is required, the judge shall determine the amount." Fla. R. Crim. Pro. 3.131(b)(2). The court did not address s. 903.02, F.S., in its decision, but based it completely upon the applicable Rules of Criminal Procedure.

HB 1185 would create a new section of ch. 903, F.S., which would specifically prevent the judge at first appearance from reducing the bond amount set by the judge that issues an arrest warrant. The bill provides three exceptions: 1.) the judge issuing the warrant indicates that the matter of bail may be reconsidered at the first appearance hearing, 2.) the judge who issued the warrant is also the first appearance judge, or 3.) the judge at first appearance is the judge to whom the case has been assigned.

HB 1185 also amends s. 903.0471, F.S., to permit a court to use, in its discretion, an affidavit of a law enforcement officer as probable cause that a defendant on pretrial release has committed a new crime, as opposed to requiring a hearing.

C. SECTION DIRECTORY:

Section 1. Creates s. 903.0465, F.S., relating to a judge's authority to reduce bond.

Section 2. Amends s. 907.0471, F.S., relating to a court's findings of probable cause for violation of pretrial release.

Section 3. Provides an effective date.

II. 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:

To the extent that the bill prevents a first appearance judge from ordering a lower bond amount, the bill may provide for increased revenues.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

Insofar as defendants have a due process liberty interest in the absolute right prior to trial of one accused of a non-capital crime, there may be state and federal constitutional rights at play with regard to the proposed legislation. See Matera v. Buchanan 192 So.2d 18 (Fla. 3rd DCA 1966) The defendant also has a right at first appearance to pretrial release under reasonable conditions. Ordinarily, the assignment of a bond amount in an arrest warrant is an ex parte hearing between law enforcement and the court. The defendant has no right to be present. To the extent that a first appearance judge's inability to change or modify the bond amount or conditions of release bears on the defendant's right to pretrial release, procedural and substantive due process considerations may come into play.

There should be no similar issue with regard to the proposed legislation's provision permitting judges to utilize probable cause affidavits for a new offense for the purpose of proving a violation of a defendant's pretrial release on another case. Because judges already have the power to determine probable cause for a new offense based on the law enforcement officer's probable cause affidavit and thereby order a defendant detained, there would not likely be a due process concern for extending this power to allow judges to determine that a defendant had violated the terms of his pretrial release in another case with an affidavit which alleges a new law violation.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES