

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: SB 1986

SPONSOR: Senator Dockery

SUBJECT: Pretrial Release

DATE: April 15, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Current law restricts certain persons arrested for, or convicted of, certain crimes from owning or possessing a firearm. This bill:

- Upon arrest for certain violent crimes, requires the court to order, as a condition of pretrial release, that the defendant may not receive or purchase a firearm.
- Upon arrest for any crime, if the defendant and the alleged victim are intimate partners and the court finds that the defendant poses a credible threat to the safety of the victim or the victim's family or a witness, the court must order the defendant to surrender all firearms that the defendant owns or possesses.
- Upon arrest for a crime of domestic violence, if the defendant and the alleged victim are intimate partners, a specific form for the court order granting pretrial release is mandated. This form creates a number of requirements for release, including surrender of all firearms. The clerk of court must furnish a copy of such an order to the victim and the sheriff. The sheriff in turn must furnish a copy to the Florida Department of Law Enforcement so that the department knows of the court order prohibiting purchase of a firearm when conducting pre-purchase checks of firearm purchasers.

This bill substantially amends the following section of the Florida Statutes: 903.047.

II. Present Situation:

The state constitution requires that most persons who are arrested be granted pretrial release. The constitution allows a court to impose reasonable conditions for such pretrial release. Statutory

law requires some conditions of release. Other conditions may be required by the court to meet the facts of the case. The court is always free to modify the original conditions of its pretrial release of a defendant, based upon circumstances as they arise during the pendency of the criminal case.

Section 903.047, F.S., provides that any order granting pretrial release must order the defendant to refrain from criminal activity of any kind, and must require the defendant not to contact the victim. Current law does not require that a court granting pretrial release prohibit the defendant from receiving or purchasing firearms.

Section 790.065, F.S., governs the purchase and sale of firearms. It requires a gun dealer to contact the Florida Department of Law Enforcement (FDLE) to determine whether a potential purchaser is prohibited from purchasing a firearm. FDLE maintains computerized records of persons prohibited from purchasing firearms. However, the check is not required if the person purchasing, or receiving delivery of, the firearm is a holder of a valid concealed weapons or firearms license, or the purchaser holds an active certification from the Criminal Justice Standards and Training Commission as a “law enforcement officer,” a “correctional officer,” or a “correctional probation officer.”

The FDLE will report back to the gun dealer that the purchaser is prohibited from purchasing a firearm if the person:

- Has been convicted of a felony.
- Has been convicted of a misdemeanor crime of domestic violence.
- Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred.
- Has been indicted or has had an information filed against her or him for an offense that is a felony under either state or federal law.
- Has had an injunction for protection against domestic violence, or repeat violence entered against the potential buyer or transferee.
- Has been arrested for any one of the enumerated offenses, while such case is pending or outstanding.

The enumerated offenses are the commission, attempt, or conspiracy to commit:

- Abuse, or aggravated abuse, of an elderly person or disabled adult
- Aggravated assault
- Aggravated battery
- Aircraft piracy
- Arson
- Assisting self-murder
- Burglary of a dwelling
- Carjacking
- Child abuse or aggravated child abuse
- Controlled substances violations

- Criminal anarchy
- Domestic violence
- Explosives
- Extortion
- Home invasion robbery
- Homicide
- Kidnapping
- Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years
- Manslaughter
- Resisting an officer with violence
- Robbery
- Sabotage
- 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
- Sexual battery
- Stalking or aggravated stalking
- Terrorism
- Treason
- Weapons and firearms violations

Current law defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. s. 741.28, F.S.

“Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. s. 741.28, F.S.

III. Effect of Proposed Changes:

This bill amends s. 903.047, F.S., to add conditions of pretrial release, and to create court order forms related to pretrial release applicable to certain circumstances.

The bill requires that if the defendant was arrested for any of the enumerated offenses (listed above), the court must order the defendant not to purchase or receive a firearm while on pretrial release. Such defendants will already be on the FDLE list of persons who may not purchase a firearm from a licensed dealer. The effect of this bill is to prohibit such defendants from obtaining firearms by gift, private purchase, or purchase in another state.

There is also a requirement to surrender firearms that the defendant possesses if the court finds that the defendant poses a credible threat to the safety of the alleged victim, victim’s family, or a

witness, or if the alleged victim and defendant are intimate partners. The term intimate partners is defined by the bill as spouses, former spouses, or persons who presently reside together in an intimate relationship or who have done so in the past or those who are parents of a child or children together, regardless of whether they have been married.

If the defendant was arrested upon a charge of domestic violence, and the defendant and the alleged victim are intimate partners, this bill creates forms of pretrial release for the court's use. To the extent that the forms add conditions of release to the statute, such as specifying the terms of the defendant retrieving personal effects from the shared residence, and visitation issues with children, the forms themselves may be said to create additional statutory conditions of release.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The law enforcement agencies will be expected to collect, process, store, and retrieve firearms under the bill. This is an additional responsibility.

VI. Technical Deficiencies:

There are certain references in the bill to "pretrial supervision" which presupposes that all counties have such supervision. It may be more applicable to all counties in the state to simply use the term "pretrial release" which would cover both supervision and non-supervision situations.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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