

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 2504

SPONSOR: Senator Fasano

SUBJECT: Pretrial Release

DATE: April 22, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends two sections of law relating to pretrial release for drug offenses. First, this bill requires a defendant to prove the source and legitimacy of any funds intended to be used to obtain release, as a condition of release for a felony violation of ch. 893, F.S., involving the sale, delivery, cultivation or manufacture of any controlled substance; the possession with intent to sell, deliver, cultivate or manufacture any controlled substance; or the trafficking of any controlled substance.

If the release is to be guaranteed by a criminal surety bond, the defendant must prove the surety's purpose and intention to secure the appearance of the defendant to answer the charges.

Finally, this bill requires the court to revoke pretrial release of a defendant who is granted pretrial release for a felony violation of ch. 893, F.S., if that defendant is subsequently arrested for another such felony violation of ch. 893, F.S. The defendant may obtain pretrial release on the second charge if the defendant proves that he or she is not a danger to the community.

This bill substantially amends the following sections of the Florida Statutes: 903.047, 903.0471, and 903.081.

II. Present Situation:

Article I, section 14, Fla. Const., provides:

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, every person charged with a crime or violation of municipal or county

ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

As explained in *State v. Paul*, 783 So.2d 1042 (Fla. 2001), the Legislature implemented this constitutional provision in s. 907.041, F.S. Section 907.041(4)(c), F.S., provides:

(4)(c) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, F.S., and any other relevant facts, that any of the following circumstances exists:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;
2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;
3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, F.S., that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings; or ...
5. The defendant poses the threat of harm to the community. The court may so conclude, if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons;
6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed; or
7. The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial.

The pretrial release statute requires the court to consider s. 903.046, F.S., relating to bail criteria. Section 903.046(2), F.S., provides:

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall 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. However, any defendant who had failed to appear on the day of any required court proceeding in the case at issue, but who had later voluntarily appeared or surrendered, shall not be eligible for a recognizance bond; and any defendant who 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 \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Notwithstanding anything in this section, the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear. This section may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.
- (e) The nature and probability of danger which 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. It is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.
- (i) The nature and probability of intimidation and danger to victims.
- (j) Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- (k) Any other facts that the court considers relevant.

Chapter 903, F.S., regulates bail. Section 903.045, F.S., provides that it is the policy of the state that a criminal surety bail bond “shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings.”

Section 903.046(2)(f), F.S., requires the trial court to consider the source of a defendant’s funds used to post bail.

III. Effect of Proposed Changes:

Senate Bill 2504 requires a defendant charged with a felony violation of ch. 893, F.S., involving the sale, delivery, cultivation or manufacture of any controlled substance; the possession with intent to sell, deliver, cultivate or manufacture any controlled substance; or the trafficking of any controlled substance to prove as a condition of pretrial release on appearance or a criminal surety bond:

- the source and legitimacy of any funds intended to be used to obtain release;
- the surety’s purpose and intention to secure the appearance of the defendant to answer the charges.

This bill also amends s. 903.0471, F.S., to require, as a condition of pretrial release, that the defendant prove by a preponderance of the evidence that he or she would not be a danger to the community if:

- the defendant has been granted pretrial release on a charge of any felony violation of ch. 893, F.S., involving the sale, delivery, cultivation or manufacture of any controlled substance; the possession with intent to sell, deliver, cultivate or manufacture any controlled substance; or the trafficking of any controlled substance; and
- the defendant is subsequently arrested for a new felony violation of ch. 893, FS., involving the sale, delivery, cultivation or manufacture of any controlled substance; the possession with intent to sell, deliver, cultivate or manufacture any controlled substance; or the trafficking of any controlled substance.

This bill takes effect on July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, section 14, Fla. Const., provides:

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, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

This bill places new restrictions on the right to pretrial release by requiring a defendant to prove the source and legitimacy of funds used to post bail, to prove the surety's purpose and intention to secure the appearance of the defendant at trial, and prove that he or she is not a danger to the community in certain situations. Currently, the trial court may deny bail pursuant to criteria in s. 907.041, F.S., and s. 903.046, F.S., if it finds there is a "substantial probability" that certain circumstances exist. This bill shifts the burden to the defendant to prove that certain circumstances exist before the trial court may grant pretrial release.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local jails may incur a fiscal impact from the bill in that, under its provisions, persons awaiting trial may be held without bail more frequently than is currently the case.

VI. Technical Deficiencies:

It may provide more clarity to delete "and is subsequently arrested for a new felony" on page 3, line 8 of the bill and replace it with the following language: "and is arrested for a felony violation of ch. 893, F.S., allegedly committed while on pretrial release status."

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.

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