

By Senator Fasano

11-54-06

1                                   A bill to be entitled  
2           An act relating to pretrial release; amending  
3           s. 903.047, F.S.; requiring that a defendant  
4           charged with an offense involving controlled  
5           substances prove the legitimacy of any funds  
6           intended to be used to obtain the release of  
7           the defendant; requiring proof of the purpose  
8           and intention of the surety to secure the  
9           appearance of the defendant to answer charges;  
10          amending s. 903.0471, F.S.; requiring a court  
11          to revoke a defendant's existing pretrial  
12          release and return the defendant to custody on  
13          the pending charge following the defendant's  
14          arrest for a subsequent felony offense  
15          involving controlled substances; providing that  
16          the defendant is ineligible for pretrial  
17          release under certain circumstances; requiring  
18          a defendant to prove that releasing the  
19          defendant will not pose a danger to the  
20          community; creating s. 903.081, F.S.; requiring  
21          a surety in a case involving controlled  
22          substances to file an affidavit attesting that  
23          he or she has made a diligent effort to  
24          determine the source and legitimacy of any  
25          funds or property intended to be used to pay  
26          the premium charged to a defendant or to act as  
27          collateral; requiring the surety to provide the  
28          detailed information relied on by the surety in  
29          preparing the affidavit; providing an effective  
30          date.  
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 903.047, Florida Statutes, is  
4 amended to read:

5 903.047 Conditions of pretrial release.--

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

9 (a) The defendant refrain from criminal activity of  
10 any kind; and

11 (b) The defendant refrain from any contact of any type  
12 with the victim, except through pretrial discovery under  
13 ~~pursuant to~~ the Florida Rules of Criminal Procedure.

14 (2) The court shall require that a defendant prove, by  
15 a preponderance of the evidence, as a condition of pretrial  
16 release by criminal surety bond, whenever a felony violation  
17 under chapter 893 is alleged:

18 (a) The source and legitimacy of any funds intended to  
19 be used to obtain the release of the defendant; and

20 (b) Proof of the purpose and intention of the surety  
21 to secure the appearance of the defendant to answer charges.

22 ~~(3)(2)~~ Upon motion by the defendant when bail is set,  
23 or upon later motion properly noticed by ~~pursuant to~~ law, the  
24 court may modify the condition required by paragraph (1)(b) if  
25 good cause is shown and the interests of justice so require.  
26 The victim shall be permitted to be heard at any proceeding in  
27 which the ~~such~~ modification is considered, and the state  
28 attorney shall notify the victim of ~~the provisions of~~ this  
29 subsection and of the pendency of any the ~~such~~ proceeding.

30 Section 2. Section 903.0471, Florida Statutes, is  
31 amended to read:

1           903.0471 Violation of condition of pretrial release.--

2           (1) Notwithstanding s. 907.041, a court may, on its  
3 own motion, revoke pretrial release and order pretrial  
4 detention if the court finds probable cause to believe that  
5 the defendant committed a new crime while on pretrial release.

6           (2) Notwithstanding s. 907.041, when a defendant has  
7 been granted pretrial release on an alleged felony violation  
8 of chapter 893 and is subsequently arrested for a new felony  
9 violation of chapter 893, the court shall revoke the  
10 defendant's existing pretrial release and return the defendant  
11 to custody on the pending charge. The defendant is not  
12 eligible for pretrial release on the subsequent charge until  
13 such time as an evidentiary hearing is held. At the  
14 evidentiary hearing on the subsequent charge, the defendant  
15 must prove, by a preponderance of the evidence, that releasing  
16 the defendant will not pose a danger to the community.

17           Section 3. Section 903.081, Florida Statutes, is  
18 created to read:

19           903.081 Obligations of the surety in an offense  
20 involving controlled substances.--Before undertaking to  
21 execute a criminal surety bond for any felony violation under  
22 chapter 893 for any person, the surety must execute and file  
23 an affidavit attesting that he or she has made a diligent  
24 effort to determine the source and legitimacy of any funds  
25 intended to be used to pay the premium charged to any  
26 defendant, as well as the source and legitimacy of any funds  
27 used to purchase any property intended to be used as  
28 collateral by the defendant, and detailing the information  
29 relied on by the surety in preparation for executing the  
30 affidavit.

31           Section 4. This act shall take effect July 1, 2006.

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SENATE SUMMARY

Requires a defendant to prove the legitimacy of any funds intended to be used to obtain the release of the defendant in an offense involving controlled substances and to provide proof of the purpose and intention of the surety to secure the appearance of the defendant to answer charges. Requires a court to revoke a defendant's existing pretrial release, return the defendant to custody on the pending charge, and not permit the defendant to be released under certain circumstances. Requires a defendant to prove that releasing the defendant will not pose a danger to the community. Requires a surety in a case involving controlled substances to file an affidavit attesting that he or she has made a diligent effort to determine the source and legitimacy of any funds or property intended to be used to pay the premium charged to a defendant or to act as collateral. Requires the surety to provide the detailed information relied on by the surety in preparing the affidavit.