

Bill No. SB 2018

Barcode 653734

CHAMBER ACTION

Senate

House

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The Committee on Criminal Justice (Wise) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 903.02, Florida Statutes, is amended to read:

903.02 Actions following ~~with respect to~~ denial; changes in bail ~~or~~ conditions ~~of bail~~ or bond amount; separation by charge or offense ~~of bond prohibited; "court"~~ defined.--

(1) If application for bail is made to an authorized court and denied, no court of inferior jurisdiction shall admit the applicant to bail unless such court of inferior jurisdiction is the court having jurisdiction to try the defendant.

(2) No 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:

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1 (a) Imposed the conditions of bail or set the amount
2 of bond required;

3 (b) Is the chief judge of the circuit in which the
4 defendant is to be tried;

5 (c) Has been assigned to preside over the criminal
6 trial of the defendant; or

7 (d) Is the designee of the chief judge and a judge has
8 not yet been assigned to the criminal trial.

9 (3) The term "court," as used in this chapter,
10 includes all state courts.

11 (4) Any judge setting or granting monetary bail shall
12 set a separate and specific bail amount for each charge or
13 offense. When bail is posted, each charge or offense requires
14 a separate bond.

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

17 903.047 Conditions of pretrial release.--

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

21 (a) ~~The defendant~~ Refrain from criminal activity of
22 any kind. ~~and~~

23 (b) ~~The defendant~~ Refrain from any contact of any type
24 with the victim, except through pretrial discovery pursuant to
25 the Florida Rules of Criminal Procedure.

26 (c) Comply with all conditions of pretrial release.

27 Section 3. Section 903.26, Florida Statutes, is
28 amended to read:

29 903.26 Forfeiture of ~~the bond; when and how directed;~~
30 ~~discharge; how and when made;~~ effect of payment.--

31 (1) A bail bond shall not be forfeited unless:

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1 (a) The information, indictment, or affidavit was
2 filed within 6 months from the date of arrest; ~~and~~

3 (b) The clerk of court gave the surety at least 72
4 hours' notice, exclusive of Saturdays, Sundays, and holidays,
5 before the time of the required appearance of the defendant.
6 Notice shall not be necessary if the time for appearance is
7 within 72 hours from the time of arrest, or if the time is
8 stated on the bond; and.

9 (c) Upon any failure to appear by a defendant, the
10 court had ordered and issued to the sheriff for execution a
11 capias or arrest warrant for the defendant who has failed to
12 appear. Such capias or warrant shall comply with the
13 requirements of s. 903.046(2)(d).

14 (2)(a) If there is a breach of the bond, the court
15 shall declare the bond and any bonds or money deposited as
16 bail forfeited. The clerk of the court shall mail a notice to
17 the surety agent and surety company in writing within 5 days
18 of the forfeiture. A certificate signed by the clerk of the
19 court or the clerk's designee, certifying that the notice
20 required herein was mailed on a specified date and accompanied
21 by a copy of the required notice, shall constitute sufficient
22 proof that such mailing was properly accomplished as indicated
23 therein. If such mailing was properly accomplished as
24 evidenced by such certificate, the failure of the surety
25 agent, of a company, or of a defendant to receive such mail
26 notice shall not constitute a defense to such forfeiture and
27 shall not be grounds for discharge, remission, reduction, set
28 aside, or continuance of such forfeiture. The forfeiture
29 shall be paid within 60 days of the date the notice was
30 mailed.

31 (b) Failure of the defendant to appear at the time,

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1 date, and place of required appearance shall result in
 2 forfeiture of the bond. Such forfeiture shall be
 3 automatically entered by the clerk upon such failure to
 4 appear, and the clerk shall follow the procedures outlined in
 5 paragraph (a). However, the court may determine, in its
 6 discretion, in the interest of justice, that an appearance by
 7 the defendant on the same day as required does not warrant
 8 forfeiture of the bond; and the court may direct the clerk to
 9 set aside any such forfeiture which may have been entered.
 10 Any appearance by the defendant later than the required day
 11 constitutes forfeiture of the bond, and the court shall not
 12 preclude entry of such forfeiture by the clerk.

13 (c) If there is a breach of the bond, the clerk shall
 14 provide, upon request, a certified copy of the warrant or
 15 *ca-pias* to the bail bond agent or surety company.

16 (3) Sixty days after the forfeiture notice has been
 17 mailed:

18 (a) State and county officials having custody of
 19 forfeited money shall deposit the money in the fine and
 20 forfeiture fund established pursuant to s. 142.01;

21 (b) Municipal officials having custody of forfeited
 22 money shall deposit the money in a designated municipal fund;

23 (c) Officials having custody of bonds as authorized by
 24 s. 903.16 shall transmit the bonds to the clerk of the circuit
 25 court who shall sell them at market value and disburse the
 26 proceeds as provided in paragraphs (a) and (b).

27 (4)(a) When a bond is forfeited, the clerk shall
 28 transmit the bond and any affidavits to the clerk of the
 29 circuit court in which the bond and affidavits are filed. The
 30 clerk of the circuit court shall record the forfeiture in the
 31 deed or official records book. If the undertakings and

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1 affidavits describe real property in another county, the clerk
2 shall transmit the bond and affidavits to the clerk of the
3 circuit court of the county where the property is located who
4 shall record and return them.

5 (b) The bond and affidavits shall be a lien on the
6 real property they describe from the time of recording in the
7 county where the property is located for 2 years or until the
8 final determination of an action instituted thereon within a
9 2-year period. If an action is not instituted within 2 years
10 from the date of recording, the lien shall be discharged. The
11 lien will be discharged 2 years after the recording even if an
12 action was instituted within 2 years unless a lis pendens
13 notice is recorded in the action.

14 (5) The court shall discharge a forfeiture within 60
15 days upon:

16 (a) A determination that it was impossible for the
17 defendant to appear as required due to circumstances beyond
18 the defendant's control. The potential adverse economic
19 consequences of appearing as required shall not be considered
20 as constituting a ground for such a determination;

21 (b) A determination that, at the time of the required
22 appearance, the defendant was adjudicated insane and confined
23 in an institution or hospital or was confined in a jail or
24 prison;

25 (c) Surrender or arrest of the defendant if the delay
26 has not thwarted the proper prosecution of the defendant. If
27 the forfeiture has been before discharge, the court shall
28 direct remission of the forfeiture. The court shall condition
29 a discharge or remission on the payment of costs and the
30 expenses incurred by an official in returning the defendant to
31 the jurisdiction of the court.

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1 (6) The discharge of a forfeiture shall not be ordered
2 for any reason other than as specified herein.

3 (7) The payment by a surety of a forfeiture under the
4 provisions of this law shall have the same effect on the bond
5 as payment of a judgment.

6 (8) If the defendant is arrested and returned to the
7 county of jurisdiction of the court prior to judgment, the
8 clerk, upon affirmation by the sheriff or the chief
9 correctional officer, shall, without further order of the
10 court, discharge the forfeiture of the bond. However, if the
11 surety agent fails to pay the costs and expenses incurred in
12 returning the defendant to the county of jurisdiction, the
13 clerk shall not discharge the forfeiture of the bond. If the
14 surety agent and the sheriff fail to agree on the amount of
15 said costs, then the court, after notice to the sheriff and
16 the state attorney, shall determine the amount of the costs.

17 Section 4. Subsection (1) of section 903.27, Florida
18 Statutes, is amended to read:

19 903.27 Forfeiture to judgment.--

20 (1) If the forfeiture is not paid or discharged by
21 order of a court of competent jurisdiction within 60 days and
22 the bond is secured other than by money and bonds authorized
23 in s. 903.16, the clerk of the circuit court for the county
24 where the order was made shall enter a judgment against the
25 surety for the amount of the penalty and issue execution.

26 However, in any case in which the bond forfeiture has been
27 discharged or set aside, judgment may be entered only in the
28 amount of any unpaid fees or costs. Within 10 days, the clerk
29 shall furnish the Department of Financial Services and the
30 Office of Insurance Regulation of the Financial Services
31 Commission with a certified copy of the judgment docket and

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1 shall furnish the surety company at its home office a copy of
2 the judgment, which shall include the power of attorney number
3 of the bond and the name of the executing agent. If the
4 judgment is not paid within 35 days, the clerk shall furnish
5 the Department of Financial Services, the Office of Insurance
6 Regulation, and the sheriff of the county in which the bond
7 was executed, or the official responsible for operation of the
8 county jail, if other than the sheriff, two copies of the
9 judgment and a certificate stating that the judgment remains
10 unsatisfied. When and if the judgment is properly paid or an
11 order to vacate the judgment has been entered by a court of
12 competent jurisdiction, the clerk shall immediately notify the
13 sheriff, or the official responsible for the operation of the
14 county jail, if other than the sheriff, and the Department of
15 Financial Services and the Office of Insurance Regulation, if
16 the department and office had been previously notified of
17 nonpayment, of such payment or order to vacate the judgment.
18 The clerk shall also immediately prepare and record in the
19 public records a satisfaction of the judgment or record the
20 order to vacate judgment. If the defendant is returned to the
21 county of jurisdiction of the court, whenever a motion to set
22 aside the judgment is filed, the operation of this section is
23 tolled until the court makes a disposition of the motion.

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

26 903.31 Canceling the bond.--

27 (1) Within 10 business days after the conditions of a
28 bond have been satisfied or the forfeiture discharged or
29 remitted, ~~the court shall order~~ the bond shall be canceled
30 and, if the surety has attached a certificate of cancellation
31 to the original bond, the clerk of the court shall furnish an

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1 executed certificate of cancellation to the surety without
 2 cost. An adjudication of guilt or innocence, an acquittal, an
 3 entry of a plea of guilty or nolo contendere, an entry into an
 4 agreement for deferred prosecution, an agreement by the
 5 defendant to enter a pretrial-intervention program, or the
 6 withholding of an adjudication of guilt of the defendant shall
 7 satisfy the conditions of the bond. The original appearance
 8 bond shall expire 36 months after such bond has been posted
 9 for the release of the defendant from custody. This subsection
 10 does not apply to cases in which a bond has been declared
 11 forfeited.

12 (2) The original appearance bond does ~~shall~~ not be
 13 ~~construed to~~ guarantee deferred sentences, appearance during
 14 or after a presentence investigation, appearance during or
 15 after appeals, ~~conduct during or appearance after admission to~~
 16 ~~a pretrial intervention program,~~ payment of fines, or
 17 attendance at educational or rehabilitation facilities the
 18 court otherwise provides in the judgment. If the original
 19 appearance bond has been forfeited or revoked, the bond shall
 20 not be reinstated without approval from the surety on the
 21 original bond.

22 (3) In any case where no formal charges have been
 23 brought against the defendant within 365 days after arrest,
 24 the court shall order the bond canceled unless good cause is
 25 shown by the state.

26 Section 6. This act shall take effect October 1, 2006.

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 28
 29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 Delete everything before the enacting clause

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1 and insert:

2 A bill to be entitled
3 An act relating to pretrial release; amending
4 s. 903.02, F.S.; providing that any judge
5 setting or granting bail shall set a separate
6 bail amount for each charge or offense;
7 amending s. 903.047, F.S.; requiring a
8 defendant to comply with all conditions of
9 pretrial release; amending s. 903.26, F.S.;
10 providing requirements for bond forfeiture;
11 amending s. 903.27, F.S; providing that in
12 cases in which the bond forfeiture has been
13 discharged or set aside, the amount of the
14 judgment may not exceed the amount of the
15 unpaid fees or costs; amending s. 903.31, F.S.;
16 providing that the clerk of court shall furnish
17 an executed certificate of cancellation to the
18 surety; providing that the original appearance
19 bond does not guarantee the defendant's conduct
20 or appearance in court under certain
21 circumstances; providing an effective date.

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