

# 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.)

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Prepared By: Judiciary Committee

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BILL: CS/CS/SB 2018

INTRODUCER: Judiciary Committee, Criminal Justice Committee, and Senator Wise

SUBJECT: Pretrial Release

DATE: April 21, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
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3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The bill requires judges who grant monetary bail to set a separate and specific bail amount for each charge or offense.

The bill also provides that a defendant must comply with all conditions of pretrial release.

Further, the bill amends statutes relating to bail bonds concerning forfeiture to judgment and cancellation.

The bill expands the actions that satisfy the conditions of the bond to include: an acquittal or the withholding of an adjudication of guilt.

This bill substantially amends the following sections of the Florida Statutes: 903.02, 903.047, 903.27, and 903.31.

## II. Present Situation:

### Pretrial Release

Article I, section 14 of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.<sup>1</sup> There is a presumption in favor of release on *nonmonetary* conditions<sup>2</sup> for any person who is granted pretrial release unless such person is charged with a

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<sup>1</sup> Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. P.

<sup>2</sup> Nonmonetary conditions include releasing defendants on their own recognizance. Rule 3.131(b)(1), Fla. R. Crim. P.

dangerous crime.<sup>3</sup> Although courts have the authority to impose any number of pretrial release conditions, courts *must* impose conditions requiring the defendant to refrain from criminal activity of any kind and to refrain from contact with the victim.<sup>4</sup>

### **Bail Bonds**

Bail, one of the most common monetary conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.<sup>5</sup> A bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court.

Bail bond agents are licensed and regulated by the Department of Financial Services (DFS), pursuant to ch. 648, F.S. A bail bond agent may either be a limited surety agent who is appointed by a surety insurance company to execute or countersign bail bonds, or a professional bail bond agent who pledges his or her own funds as security for a bail bond. The chapter provides requirements for licensure of bail bond agents, limits the amount of premium and expenses that can be charged, restricts the types of collateral that can be demanded, and requires that such collateral be returned in a timely manner once the bond has been canceled.

Chapter 903, F.S., sets forth the requirements relating to bail and bail bonds, including all forms of pretrial release. After a defendant has been released on bail, the bail bond agent has the authority to “surrender,” or return, the defendant to the custody of the person who would have held the defendant absent the bail.<sup>6</sup> Ordinarily, a bail bond agent will do this if the bail bond agent believes the defendant is a flight risk or if the collateral provided for bail is discovered to be insufficient. Upon surrender, the official taking custody of the defendant will issue a certificate acknowledging the surrender.<sup>7</sup> The bail bond agent then can present the certificate and bond to the court, which will issue an order exonerating the obligors and refunding money or bonds deposited as bail.<sup>8</sup>

If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond “forfeited.”<sup>9</sup> Within five days after forfeiture of a bail bond, the court must mail a notice to the surety agent and the surety company.<sup>10</sup> The forfeiture of a bond must be paid within 60 days of the date the notice to the bail

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<sup>3</sup> Section 907.041(4)(a), F.S., defines “dangerous crimes” to include: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; 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; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; and attempting or conspiring to commit any such crime.

<sup>4</sup> Section 903.047, F.S.

<sup>5</sup> Section 648.25, F.S., defines “Professional bail bond agent” as any person who pledges United States currency, United States postal money orders, or cashier’s checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

<sup>6</sup> Section 903.21, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 903.26, F.S.

<sup>10</sup> Section 903.26(2)(a), F.S.

bond agent and surety was filed.<sup>11</sup> However, after a breach of the bond, the law requires a court to “discharge” a forfeiture (before it is paid) within 60 days upon:

- a determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant’s control;
- a determination that, at the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant.<sup>12</sup>

In addition to the above, the clerk of court must discharge the forfeiture of the bond if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment.<sup>13</sup> The bail bond agent is required to pay the costs associated with returning the defendant to the county of jurisdiction, as a condition of the clerk discharging the forfeiture.<sup>14</sup>

In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond.<sup>15</sup> After the judgment is entered, the court is required to furnish DFS and the surety company issuing the bond with a certified copy of the judgment.<sup>16</sup> If this judgment is not paid within 35 days, the clerk of the court provides DFS and the sheriff of the county in which the bond was executed, copies of the judgment and a certification that the judgment has not been satisfied.<sup>17</sup> DFS receives notice of the judgment and monitors unpaid judgments as a part of its regulation of surety insurance companies. Bail bond agents who have outstanding judgments that are unpaid for 35 days are precluded by law from executing bail bonds. After 50 days of an unpaid judgment, the surety company is precluded by law from issuing bail bonds.<sup>18</sup>

The law provides that within 10 days after all of the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled.<sup>19</sup> All of the conditions of a bond are deemed to be satisfied after the defendant has been adjudicated guilty or not guilty.<sup>20</sup>

### ***Polakoff Bail Bonds v. Orange County***

Section 903.31(1), F.S., states, in part: “An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond.”

Section 903.31(2), F.S. states:

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<sup>11</sup> *Id.*

<sup>12</sup> Section 903.26(5), F.S.

<sup>13</sup> Section 903.26(8), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 903.27(1), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Section 903.27(3), F.S.

<sup>19</sup> Section 903.31(1), F.S.

<sup>20</sup> *Id.*

The original appearance bond shall not be construed to guarantee deferred sentences, appearance during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

In *Polakoff Bail Bonds v. Orange County*, the Florida Supreme Court said the condition of an appearance bond was not satisfied when the trial court accepts a plea of guilty and enters a finding of guilt, but withholds adjudication and judgment and continues the case for sentencing until the completion of the presentence investigation.<sup>21</sup> The court found that a judgment must be entered in order for the conditions of bond to be satisfied.<sup>22</sup> The court read s. 903.31, F.S., in conjunction with s. 903.045, F.S., which explains the nature of a surety bail bond:

It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond . . . shall be construed as a commitment by and an obligation upon the bail bondsman to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bondsman of this commitment and obligation.<sup>23</sup>

The court found that “in the context of a presentence investigation, unless the trial court adjudicates a defendant guilty and provides for the presentence investigation within the judgment, the bond is not satisfied and the defendant must continue to appear at all subsequent proceedings to avoid forfeiture.”<sup>24</sup>

Subsequent to the *Polakoff Bail Bonds* decision, the Fifth District Court of Appeal found that the Florida Supreme Court’s decision in *Polakoff Bail Bonds* was limited to the circumstances of a presentence investigation where no judgment had been entered, but reasoned that “because there is never an adjudication of guilt or innocence before a defendant is accepted into a pretrial intervention program, we believe that the legislature must have intended, in cases involving pretrial intervention, an exception to the general rule requiring an adjudication for discharge of a bond.”<sup>25</sup>

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<sup>21</sup> 634 So. 2d 1083, 1085 (Fla. 1994).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* (quoting s. 903.045, F.S. (1991)).

<sup>24</sup> *Id.*

<sup>25</sup> *Rosenberg Bail Bonds v. Orange County*, 663 So. 2d 1389, 1392 (Fla. 5th DCA 1995).

### III. Effect of Proposed Changes:

#### Pretrial Release

Existing law mandates certain conditions of pretrial release. A defendant on pretrial release must refrain from criminal activity and must refrain from contact with the victim. This bill requires a defendant to comply with all conditions of pretrial release.

This bill also *requires* judges who grant monetary bail to set a separate and specific bail amount for each charge or offense.<sup>26</sup> The bill also provides that each charge or offense requires a separate bond when bail is posted.

#### Bail Bonds

##### *Bond Forfeiture, Discharge*

This bill provides that in any case in which a bond forfeiture has been discharged or set aside by the court conditioned on payment of costs and fees, the amount for which judgment may be entered may not exceed the costs and fees. The bill also requires the clerk of the court to furnish an executed certificate of cancellation of the bond without cost after the court has ordered the bond cancelled. The bill expands the actions that satisfy the conditions of the bond to include: an acquittal or the withholding of an adjudication of guilt.

This bill would appear to have the effect of overruling the *Polakoff Bail Bond* holding that a bond is not satisfied when adjudication is withheld and the case is continued for sentencing until the completion of a presentence investigation.<sup>27</sup>

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>26</sup> Florida Statutes do not currently require (or prevent) a judge to set a separate bail for each offense charged. However, the usual practice is for judges to set one bail amount regardless of the number of offenses for which a defendant is charged. This is commonly called a “blanket bond.”

<sup>27</sup> See *Polakoff Bail Bonds*, 634 So. 2d at 1085.

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

None.

**B. Private Sector Impact:**

The bail bond industry may benefit because requiring judges to set separate bail amounts for each charged offense *may* result in an increase of bail bond premiums.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The effect of the proposed changes to s. 903.31, F.S., appears to make that section inconsistent with the Legislature's statement of public policy in s. 903.045, F.S. Section 903.045, F.S., states that a criminal surety bail bond is a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and fulfills all conditions of the bond. The proposed changes to s. 903.31, F.S., would create situations where there are subsequent criminal proceedings for which the surety bail bond is not a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears because the conditions of the bond have been satisfied. The Legislature may wish to consider amending s. 903.045, F.S., to make it consistent with the proposed changes to s. 903.31, F.S. Changing s. 903.045, F.S., to provide that a criminal surety bail bond is a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings until the conditions of the bond have been satisfied would be consistent with the proposed changes to s.903.31, F.S.

## **VIII. Summary of Amendments:**

None.

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

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