

By the Committee on Criminal Justice; and Senator Wise

591-2074-06

A bill to be entitled

An act relating to pretrial release; amending s. 903.02, F.S.; providing that any judge setting or granting bail shall set a separate bail amount for each charge or offense; amending s. 903.047, F.S.; requiring a defendant to comply with all conditions of pretrial release; amending s. 903.26, F.S.; providing requirements for bond forfeiture; amending s. 903.27, F.S.; providing that in cases in which the bond forfeiture has been discharged or set aside, the amount of the judgment may not exceed the amount of the unpaid fees or costs; amending s. 903.31, F.S.; providing that the clerk of court shall furnish an executed certificate of cancellation to the surety; providing that the original appearance bond does not guarantee the defendant's conduct or appearance in court under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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

1 admit the applicant to bail unless such court of inferior
2 jurisdiction is the court having jurisdiction to try the
3 defendant.

4 (2) No judge of a court of equal or inferior
5 jurisdiction may remove a condition of bail or reduce the
6 amount of bond required, unless such judge:

7 (a) Imposed the conditions of bail or set the amount
8 of bond required;

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

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

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

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

17 (4) Any judge setting or granting monetary bail shall
18 set a separate and specific bail amount for each charge or
19 offense. When bail is posted, each charge or offense requires
20 a separate bond.

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

23 903.047 Conditions of pretrial release.--

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

27 (a) ~~The defendant~~ Refrain from criminal activity of
28 any kind. ~~;~~ ~~and~~

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

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

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

4 903.26 Forfeiture of ~~the bond; when and how directed;~~
5 ~~discharge; how and when made;~~ effect of payment.--

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

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

9 (b) The clerk of court gave the surety at least 72
10 hours' notice, exclusive of Saturdays, Sundays, and holidays,
11 before the time of the required appearance of the defendant.
12 Notice shall not be necessary if the time for appearance is
13 within 72 hours from the time of arrest, ~~or if the time is~~
14 ~~stated on the bond; and-~~

15 (c) Upon any failure to appear by a defendant, the
16 court had ordered and issued to the sheriff for execution a
17 capias or arrest warrant for the defendant who has failed to
18 appear. Such capias or warrant shall comply with the
19 requirements of s. 903.046(2)(d).

20 (2)(a) If there is a breach of the bond, the court
21 shall declare the bond and any bonds or money deposited as
22 bail forfeited. The clerk of the court shall mail a notice to
23 the surety agent and surety company in writing within 5 days
24 of the forfeiture. A certificate signed by the clerk of the
25 court or the clerk's designee, certifying that the notice
26 required herein was mailed on a specified date and accompanied
27 by a copy of the required notice, shall constitute sufficient
28 proof that such mailing was properly accomplished as indicated
29 therein. If such mailing was properly accomplished as
30 evidenced by such certificate, the failure of the surety
31 agent, of a company, or of a defendant to receive such mail

1 | notice shall not constitute a defense to such forfeiture and
2 | shall not be grounds for discharge, remission, reduction, set
3 | aside, or continuance of such forfeiture. The forfeiture
4 | shall be paid within 60 days of the date the notice was
5 | mailed.

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

19 | (c) If there is a breach of the bond, the clerk shall
20 | provide, upon request, a certified copy of the warrant or
21 | capias to the bail bond agent or surety company.

22 | (3) Sixty days after the forfeiture notice has been
23 | mailed:

24 | (a) State and county officials having custody of
25 | forfeited money shall deposit the money in the fine and
26 | forfeiture fund established pursuant to s. 142.01;

27 | (b) Municipal officials having custody of forfeited
28 | money shall deposit the money in a designated municipal fund;

29 | (c) Officials having custody of bonds as authorized by
30 | s. 903.16 shall transmit the bonds to the clerk of the circuit
31 |

1 court who shall sell them at market value and disburse the
2 proceeds as provided in paragraphs (a) and (b).

3 (4)(a) When a bond is forfeited, the clerk shall
4 transmit the bond and any affidavits to the clerk of the
5 circuit court in which the bond and affidavits are filed. The
6 clerk of the circuit court shall record the forfeiture in the
7 deed or official records book. If the undertakings and
8 affidavits describe real property in another county, the clerk
9 shall transmit the bond and affidavits to the clerk of the
10 circuit court of the county where the property is located who
11 shall record and return them.

12 (b) The bond and affidavits shall be a lien on the
13 real property they describe from the time of recording in the
14 county where the property is located for 2 years or until the
15 final determination of an action instituted thereon within a
16 2-year period. If an action is not instituted within 2 years
17 from the date of recording, the lien shall be discharged. The
18 lien will be discharged 2 years after the recording even if an
19 action was instituted within 2 years unless a lis pendens
20 notice is recorded in the action.

21 (5) The court shall discharge a forfeiture within 60
22 days upon:

23 (a) A determination that it was impossible for the
24 defendant to appear as required due to circumstances beyond
25 the defendant's control. The potential adverse economic
26 consequences of appearing as required shall not be considered
27 as constituting a ground for such a determination;

28 (b) A determination that, at the time of the required
29 appearance, the defendant was adjudicated insane and confined
30 in an institution or hospital or was confined in a jail or
31 prison;

1 (c) Surrender or arrest of the defendant if the delay
2 has not thwarted the proper prosecution of the defendant. If
3 the forfeiture has been before discharge, the court shall
4 direct remission of the forfeiture. The court shall condition
5 a discharge or remission on the payment of costs and the
6 expenses incurred by an official in returning the defendant to
7 the jurisdiction of the court.

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

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

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

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

26 903.27 Forfeiture to judgment.--

27 (1) If the forfeiture is not paid or discharged by
28 order of a court of competent jurisdiction within 60 days and
29 the bond is secured other than by money and bonds authorized
30 in s. 903.16, the clerk of the circuit court for the county
31 where the order was made shall enter a judgment against the

1 surety for the amount of the penalty and issue execution.
2 However, in any case in which the bond forfeiture has been
3 discharged or set aside, judgment may be entered only in the
4 amount of any unpaid fees or costs. Within 10 days, the clerk
5 shall furnish the Department of Financial Services and the
6 Office of Insurance Regulation of the Financial Services
7 Commission with a certified copy of the judgment docket and
8 shall furnish the surety company at its home office a copy of
9 the judgment, which shall include the power of attorney number
10 of the bond and the name of the executing agent. If the
11 judgment is not paid within 35 days, the clerk shall furnish
12 the Department of Financial Services, the Office of Insurance
13 Regulation, and the sheriff of the county in which the bond
14 was executed, or the official responsible for operation of the
15 county jail, if other than the sheriff, two copies of the
16 judgment and a certificate stating that the judgment remains
17 unsatisfied. When and if the judgment is properly paid or an
18 order to vacate the judgment has been entered by a court of
19 competent jurisdiction, the clerk shall immediately notify the
20 sheriff, or the official responsible for the operation of the
21 county jail, if other than the sheriff, and the Department of
22 Financial Services and the Office of Insurance Regulation, if
23 the department and office had been previously notified of
24 nonpayment, of such payment or order to vacate the judgment.
25 The clerk shall also immediately prepare and record in the
26 public records a satisfaction of the judgment or record the
27 order to vacate judgment. If the defendant is returned to the
28 county of jurisdiction of the court, whenever a motion to set
29 aside the judgment is filed, the operation of this section is
30 tolled until the court makes a disposition of the motion.
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1 Section 5. Section 903.31, Florida Statutes, is
2 amended to read:

3 903.31 Canceling the bond.--

4 (1) Within 10 business days after the conditions of a
5 bond have been satisfied or the forfeiture discharged or
6 remitted, ~~the court shall order~~ the bond shall be canceled
7 and, if the surety has attached a certificate of cancellation
8 to the original bond, the clerk of the court shall furnish an
9 executed certificate of cancellation to the surety without
10 cost. An adjudication of guilt or innocence, an acquittal, an
11 entry of a plea of guilty or nolo contendere, an entry into an
12 agreement for deferred prosecution, an agreement by the
13 defendant to enter a pretrial-intervention program, or the
14 withholding of an adjudication of guilt of the defendant shall
15 satisfy the conditions of the bond. The original appearance
16 bond shall expire 36 months after such bond has been posted
17 for the release of the defendant from custody. This subsection
18 does not apply to cases in which a bond has been declared
19 forfeited.

20 (2) The original appearance bond does ~~shall~~ not be
21 ~~construed to~~ guarantee deferred sentences, appearance during
22 or after a presentence investigation, appearance during or
23 after appeals, ~~conduct during or appearance after admission to~~
24 ~~a pretrial intervention program,~~ payment of fines, or
25 attendance at educational or rehabilitation facilities the
26 court otherwise provides in the judgment. If the original
27 appearance bond has been forfeited or revoked, the bond shall
28 not be reinstated without approval from the surety on the
29 original bond.

30 (3) In any case where no formal charges have been
31 brought against the defendant within 365 days after arrest,

1 the court shall order the bond canceled unless good cause is
2 shown by the state.

3 Section 6. This act shall take effect October 1, 2006.
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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 2018

- 8 - The amendment to s. 903.046, F.S., (Section 2 of the
9 original bill) has been removed from the bill.
10 - The necessity of a capias being issued for forfeiture of
11 a bond to occur has been clarified so that it does not
12 require the court to issue a capias, but the capias is
13 still a condition precedent for forfeiture to occur.
14 - The bill no longer addresses extradition of a defendant.
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