

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 827

Pretrial Release

SPONSOR(S): Planas

TIED BILLS:

IDEN./SIM. BILLS: SB 2018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u></u>	<u>DeBeaugrine</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

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. With certain exceptions, there is a presumption in favor of release on nonmonetary conditions. Additionally, courts *must* impose conditions requiring the defendant on pretrial release to refrain from criminal activity of any kind and to refrain from contact with the victim.

HB 827 requires judges who grant monetary bail to set a separate and specific bail amount for each charge. This bill also provides that defendants charged with a second or subsequent felony within three years after the date of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of release on nonmonetary conditions. This bill also provides that a court must require a defendant to comply with all conditions of pretrial release.

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 who pledges that a defendant will appear at all scheduled proceedings before a court. 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." 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.

HB 827 amends statutes relating to bail bonds, specifically their forfeiture, judgment, and cancellation. Additionally, it clarifies that the original appearance bond does not guarantee a defendant's appearance after a defendant enters a guilty or nolo contendere plea, after a defendant is adjudicated guilty, after adjudication is withheld, and in other situations.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security → This bill provides that a court must require persons on pretrial release to comply with all conditions of pretrial release; provides that a court must set a separate bail for each charged offense; provides that defendants charged with a second or subsequent felony within three years after the date of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of pretrial release on nonmonetary conditions; and requires courts to issue a *caus* or arrest warrant if a defendant on bond fails to appear.

B. EFFECT OF PROPOSED CHANGES:

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.¹ There is a presumption in favor of release on *nonmonetary* conditions² for any person who is granted pretrial release unless such person is charged with a dangerous crime.³ 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.⁴

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.⁵ 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 chapter 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 which can be charged, restricts the types of collateral which 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

¹ Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. Proc.

² Nonmonetary conditions include releasing defendants on their own recognizance. Rule 3.131(b)(1), Fla. R. Crim. Proc.

³ "Dangerous crimes" 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. s. 907.041, F.S.

⁴ s. 903.047, F.S.

⁵ 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.

“surrender,” or return, the defendant to the custody of the person who would have held the defendant absent the bail.⁶ 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.⁷ 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.⁸

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.”⁹ Within 5 days after forfeiture of a bail bond, the court must mail a notice to the surety agent and the surety company.¹⁰ The forfeiture of a bond must be paid within 60 days of the date the notice to the bail bond agent and surety was filed.¹¹ 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.¹²

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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶ If this judgment is not paid within 35 days, 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.¹⁷ 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 which 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.¹⁸

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.¹⁹ All of the conditions of a bond are deemed to be satisfied after the defendant has been adjudicated guilty or not guilty.²⁰

Polakoff Bail Bonds v. Orange County

⁶ s. 903.21, F.S.

⁷ *Id.*

⁸ *Id.*

⁹ s. 903.26, F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ s. 903.27, F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ s. 903.31, F.S.

²⁰ *Id.*

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:

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.²¹ The court found that a judgment must be entered in order for the conditions of bond to be satisfied.²² 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, executed by a bail bond agent licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, 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 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 bond agent of this commitment and obligation.²³

The court found that “in the context of a presentence investigation, unless the trial court adjudicates the 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.”²⁴

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.”²⁵

Effect of Proposed Changes

Pretrial Release

As noted above, there is currently a presumption in favor of release on *nonmonetary* conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime. This bill provides that defendants charged with a second or subsequent felony within three years after the date

²¹ 634 So.2d 1083 (Fla. 1994).

²² *Id.* at 1085.

²³ *Id.*

²⁴ *Id.*

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

of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of release on nonmonetary conditions.

Additionally, 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.²⁶

Bail Bonds

This bill amends the bail bond forfeiture statute to *require* a court to issue a *capias* or an arrest warrant for a defendant who has failed to appear.²⁷ The *capias* or arrest warrant must comply with the requirements of s. 903.046(2)(d), F.S.,²⁸ and must require extradition of the defendant when arrested in another state if the original charge is a felony. The *capias* must also require return transportation of the defendant when arrested in another state to the jurisdiction of the court. The bill provides that if the court fails to issue a *capias* or an arrest warrant, any bonds deposited by a bail bond agent shall be discharged.

This bill also allows for exoneration of the surety if the State Attorney fails to institute extradition proceedings or extradite a defendant on a bail bond if the surety agrees in writing to pay transportation costs. In such instances, any forfeiture or judgment must be set aside or vacated.

This bill provides that in any case in which a bond forfeiture has been discharged 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 provides for the cancellation of the bond by the clerk of the court without a court order. This bill provides that a bond does not guarantee a defendant's conduct or appearance at any time after:

- The defendant enters a plea of guilty or nolo contendere;
- The defendant enters into an agreement for deferred prosecution or agrees to enter a pretrial intervention program;
- The defendant is acquitted;
- The defendant is adjudicated guilty;
- Adjudication of guilt is withheld; or
- The defendant is found guilty by a judge or jury.

This bill would have the effect of overruling the *Polakoff Bail Bond* holding that a bond is not satisfied when adjudication is withheld.

C. SECTION DIRECTORY:

Section 1. Amends s. 903.02, F.S., providing that any judge setting or granting bail shall set a separate bail amount for each charge or offense.

²⁶ 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 how many offenses a defendant is charged with.

²⁷ Although not required by statute, courts will generally issue a *capias* or an arrest warrant for a defendant who has failed to appear as required by a bail bond. Additionally, Rule 3.131(g), Fla. R. Crim. Proc., authorizes, but does not require, courts to direct the arrest and commitment of a defendant at large on bail when there has been a breach.

²⁸ Section 903.046(2)(d), F.S., relates to what a court may consider in determining whether to release a defendant on bail or other conditions. It is not related to *capiases* or arrest warrants and thus appears to be an incorrect citation.

Section 2. Amends s. 903.046, F.S., providing that a defendant forfeits the right to a presumption in favor of release on nonmonetary conditions if charged with a second or subsequent felony within a certain time period;

Section 3. Amends s. 903.047, F.S., requiring a defendant to comply with all conditions of pretrial release.

Section 4. Amends s. 903.26, F.S., providing for issuance of a capias or arrest warrant for a defendant who has failed to appear; providing requirements for such a capias or warrant; providing for exoneration of a surety and discharge of any bonds if a court fails or refuses to issue such capias or warrant; providing that failure of the state attorney to institute extradition proceedings or extradite the principal on a bail bond after the surety's written agreement to pay actual transportation costs exonerates the surety.

Section 5. Amends s. 903.27, F.S., providing that in cases in which the bond forfeiture has been discharged by the court, the amount of the judgment may not exceed the amount of unpaid fees or costs upon which the discharge had been conditioned.

Section 6. Amends 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.

Section 7. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bail bond industry will benefit in the following ways:

- Requiring judges to set separate bail amounts for each charged offense may result in an increase of bail bond premiums;
- Removing the presumption in favor of release on nonmonetary conditions for defendants charged with a second or subsequent felony within three years of a prior felony charge will likely increase the number of persons who receive bail and use the services of a bail bond agent;
- Bail bond agents will be exonerated and their bond will be returned if a court fails to issue a capias or warrant that contains specific conditions in **all** instances where a defendant fails to appear; and

- After a bail bond agent agrees in writing to pay the transport costs, the agent will be exonerated and their bond will be returned if the state attorney fails to institute extradition proceedings or extradite the principal on a bail bond.

D. FISCAL COMMENTS:

There could be a workload increase associated with requiring judges to set bail separately for each charge or offense. This would increase the amount of time spent by a judge spent per defendant and increase paperwork required of the courts, clerks of court and county jail personnel.

Removing the presumption in favor of release on nonmonetary conditions for defendants charged with a second or subsequent felony within three years and the requirement to set separate bail amounts for each offense could increase the number of defendants that are not able to bond out of jail. This could increase detainee populations in county jails.

In addition, the requirement for the court to issue an arrest warrant each time a defendant fails to appear could increase workload for the sheriff.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Although the bill could result in increased workload for county jails and sheriffs, the bill appears to be exempt from the provisions of Article VII, section 18 because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2 of the bill provides that defendants give up their right to a presumption in favor of release on nonmonetary conditions if the defendant is charged with a second or subsequent felony offense within three years after the date of a prior felony charge.

- The Florida Constitution provides, with some exceptions, that persons charged with a crime are entitled to pretrial release *on reasonable conditions*. Section 907.041, F.S., creates a presumption in favor of release on nonmonetary conditions, and provides that persons must be released on monetary conditions if such conditions are necessary to assure the presence of the person at court proceedings, protect the community from risk of physical harm to persons; and to assure the integrity of the judicial process. Any challenge to the above provision would likely relate to whether it is a reasonable condition that would assure the defendant's presence in court, protect the community from risk of physical harm to persons, and assure the integrity of the judicial process.

Section 4 of the bill *requires* a court to issue a *capias* or an arrest warrant for a defendant who has failed to appear. The *capias* or arrest warrant must comply with the requirements of s. 903.046(2)(d), F.S., must require extradition of the defendant when arrested in another state if the original charge is a felony, and must require return transportation of the defendant when arrested in another state to the jurisdiction of the court. If the court fails to issue a *capias* or an arrest warrant, any bonds deposited by a bail bond agent shall be discharged.

- As noted above, the citation to s. 903.046(2)(d), F.S., appears to be incorrect as the cited section does not discuss capiases or arrest warrants.
- Currently, Florida Statutes do not *require* a court to issue a capias or warrant when a defendant fails to appear. Instead, courts are given *discretion* to issue a capias or warrant in such circumstances. See Rule 3.131, Fla. R. Crim. Proc. There are times when a defendant fails to appear because he or she is unavailable (e.g. hospitalized, has another court appearance at the same time) to attend. In many of these instances, the court is aware of the circumstances and permits the defendant to be absent. However, as drafted, this bill would *require* a court to issue a capias or warrant in these circumstances. If the court fails to do so, even if it was intentional, any bonds deposited by the bail bond agent must be discharged (i.e. given back to the bail bond agent).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES