

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 2676

INTRODUCER: Senator Crist

SUBJECT: Pretrial Release Programs

DATE: April 2, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.			JU	
3.			JA	
4.				
5.				
6.				

I. Summary:

The bill provides for reporting requirements for pretrial release programs and also amends several sections related to the posting of bail.

The bill makes the following changes:

- Requires pretrial release programs to maintain a register with the clerk of the court which provides detailed information about defendants interviewed and released through the program.
- Requires pretrial release programs to make annual reports which provide detailed reports about defendants released through the program.
- Provides the chief judge of the circuit in which the pretrial release program is based review authority for noncompliance with the reporting requirements.
- Provides any monetary component of pretrial release may be met by a surety bond.
- Provides differing amounts may not be set for cash bonds, surety bonds, or other forms of pretrial release.
- Requires cash bond forms to display a notice that any and all parts of a cash bond may be subject to withholding by the clerk of the court to pay court costs, fees, and fines, regardless of who posts the cash bond.

This bill substantially amends sections 903.011, 903.09, and 903.286 of the Florida Statutes, and creates a new section, 907.043, Florida Statutes.

II. Present Situation:

Chapter 903, F.S., regulates bail and bond procedures. There are three ways a defendant can gain release from jail prior to the conclusion of a criminal case: the defendant can be released on their own recognizance, which does not require that any money be posted; the defendant may be required to post a cash bond¹; or the defendant would have the option to post a surety bond² through the services of a bail bondsman. The bond amount is set by a judge, either during first appearance or by a warrant. The bond amount is based on the nature and circumstance of the criminal offense, the weight of the evidence against the defendant, the defendant's ties to the community, the defendant's prior conduct, whether the defendant is a danger to the community, whether the defendant is already on release for another criminal offense, the source of the funds used to post bail, the street value of a controlled substance connected to the criminal case if the offense involved drugs, the probability of intimidation to victims, and any other facts the court deems relevant.³

III. Effect of Proposed Changes:

Pretrial Release Programs

The bill defines a "pretrial release program" to mean an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants. The bill requires pretrial release programs to prepare a register⁴ containing various information about the defendants released to the program. The register must be updated weekly and must be located in the office of the clerk of the circuit court in the county in which the program is located. The register must provide the following information:

- The name, location, and funding source of the pretrial services program;
- The number of defendants assessed for pretrial release;
- The number of indigent defendants interviewed for pretrial release;
- The names and number of defendants accepted into the program;
- The names and number of indigent defendants accepted into the program;
- The charges filed against the defendants accepted into the program;
- The nature of any prior criminal convictions of any defendant accepted into the program;
- The court appearances required of defendants accepted into the program;
- The date of each instance in which a defendant accepted into the program fails to appear for a scheduled court appearance;

¹ To post a cash bond, a defendant deposits the entire amount of the bail with the clerk of the court. If the defendant makes all court appearances, the defendant is refunded the entire amount of the bond, minus any monies that are withheld by the clerk of the court to pay court expenses, fees, fines, etc.

² To post a surety bond, a defendant would obtain the services of a bail bondsman, who typically charge a defendant a fee of 10 percent of the bond amount, with the bondsman paying the total bail amount to the clerk of the court and acting as a guarantor of the defendant's presence at all court appearances. The defendant does not receive a refund of the 10 percent upon conclusion of the criminal case. The bondsman retains the 10 percent as a fee for services. Court costs, fees, and fines may not be withheld from a surety bond.

³ Section 903.046, F.S.

⁴ The bill defines a "register" to mean a public record prepared by a pretrial release program which furnishes specified data and is readily available to the public at the office of the clerk of the circuit court.

- The number of warrants which have been issued for a defendant's failure to appear at a scheduled court appearance; and
- The number and type of program noncompliance committed by a defendant in the program and whether the program recommended the court to revoke the defendant's release.

The bill provides that no later than March 31 of each year, each pretrial services program must submit an annual report to the Office of the State Court Administrator and to the clerk of the circuit court in the county where the program is located containing the following information:

- The name, location, and funding sources of the pretrial release program, including the amount of public funds the program receives.
- The operating and capital budget of each program that receives public funds.
- The percentage of the program's total budget that is publicly funded.
- The number of persons employed by each program.
- The number of defendants assessed for pretrial release.
- The number of defendants recommended for pretrial release.
- The number of defendants for whom the pretrial release program recommended against nonsecured release.
- The number of defendants granted nonsecured release after the program recommended nonsecured release.⁵
- The number of defendants assessed for pretrial release who were declared indigent by the court.
- The name and case number of each person granted nonsecured release who failed to attend a scheduled court appearance, who had a warrant issued for failure to appear, or were arrested for a new criminal offense while on release to a pretrial release program.
- The percentage of the program's budget allocated to assisting a defendant's release through nonpublic funding.
- The amount of fees paid by defendants to the program.
- Any additional information deemed necessary by the chief judge of the circuit or the Office of the State Court Administrator.

The bill provides that if the chief judge of the circuit court finds the pretrial release program has not maintained the register or filed the annual report, the chief judge shall order the pretrial release program to prepare a written report explaining the noncompliance and proposing remedial measures. For a second or subsequent finding of noncompliance, the chief judge must order the pretrial services program to show why it should not be held in contempt for continued noncompliance. If the pretrial release program is found in contempt of court, the chief judge has the discretion to order the pretrial release program to reduce its budget by 25 percent if the program receives public funds, and may immediately cancel any contract with a private pretrial release program.

⁵ The bill defines "nonsecured release" to mean the release of a defendant from pretrial custody when no secured surety or cash bond is required as a condition of the release.

General Bail Provisions

The bill provides that any monetary component of pretrial release may be met by a surety bond. This would prevent judges from requiring a defendant to post a cash bond in certain circumstances. For example, for contempt of court for failure to pay court costs, a judge could set a bond amount equal to the amount of the court costs owed. Since clerks of the court may withhold any and all of a cash bond to pay court costs, fees, and fines, a defendant would essentially be required to pay court costs to get out of jail. The bill also provides that a judge may not set different amounts for cash bonds, surety bonds, and other forms of pretrial release. For example, some judges require defendants who are active duty military to post either a bond, or be released on their own recognizance to an officer. The bill would seem to prohibit such an arrangement. Additionally, if a judge set a cash bond amount that was 10 percent of the surety bond amount, there would be no financial incentive for a defendant to post a surety bond.

Withholding of Cash Bonds

Currently, upon the disposition of a criminal case, the clerk of the court may withhold any portion of a cash bond posted by any person other than a licensed bail bond agent to pay court fees, court costs, and criminal penalties.⁶ The cash bond may be forfeited and withheld regardless of who posts the bond. In some circumstances, a person other than the defendant, such as an employer, friend, etc., may post a cash bond for the defendant. In such circumstances, the bond is still subject to withholding and forfeiture by the clerk of the court.

The new cash bond forms required by the bill would be required to prominently display a notice explaining the cash bond is subject to forfeiture and withholding by the clerk of the court for the payment of court fees, court costs, and criminal penalties. The notice must state that the cash bond is subject to forfeiture and withholding regardless of who posted the bond.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

⁶ Section 903.286, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Most pretrial release programs are funded by local entities such as counties and sheriff's offices. The pretrial release programs would be responsible for maintaining the register on a weekly basis, and also would have to compile annual reports. The clerk of the circuit court would be required to keep the register and make it available to the public.

If the budgets of the pretrial release programs are impacted, either by the cost of reporting data or by a reduction for noncompliance with the reporting requirements, the programs may not have the ability to supervise as many defendants. As a result, some defendants may be required to post bail instead of being released to the program on their own recognizance or with a lower bail amount. This would have the effect of increasing the number of defendants who would remain in county jails prior to the disposition of their criminal case.

VI. Technical Deficiencies:

Section 907.043(4)(c) and s. 907.043(4)(d), F.S., contain additional information the pretrial release programs must submit in their annual report. These two subsections could be moved into the list of information that must be in the annual report under s. 907.043(4)(b), F.S.

Section 903.09, F.S., is entitled "Justification of Sureties." The language added by the bill adds an additional requirement for cash bonds. The title of that section could be changed to reflect that it will also relate to cash bonds.

VII. Related Issues:

The bill requires the chief judge to reduce the budget of a pretrial release program that is not in compliance with the reporting requirements. Most pretrial release programs receive their funding from counties, cities, and sheriff's offices, so it is unlikely the chief judge would have the authority to reduce the budget of the programs.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.