

**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 Judiciary Committee

BILL: CS/SB 2676

INTRODUCER: Judiciary Committee and Senator Crist

SUBJECT: Citizens' Right-to-Know Act/Pretrial Release

DATE: April 18, 2008 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.	Maclure	Maclure	JU	<b>Fav/CS</b>
3.			JA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill prescribes 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 information related to 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.
- Prohibits differing amounts from being 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 and 903.286 and creates section 907.043, Florida Statutes.

## II. Present Situation:

Pretrial release of some defendants is grounded, in part, in the Florida Constitution. Article I, section 14, provides:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

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 his or her own recognizance, which does not require that any money be posted; the defendant may be required to post a cash bond;<sup>1</sup> or the defendant would have the option to post a surety bond<sup>2</sup> 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.<sup>3</sup>

Pretrial release programs generally are localized efforts to assess the public safety risk of arrestees in order to assist courts in making decisions about releasing them.

Pretrial Services programs are found as either parts of a jail, courts, probation departments or independent or private agencies. Pretrial programs have different staff sizes and hours based on their budgets. It is not uncommon to have these programs all different sizes, from the very small (2-4) person staff to the very large (50-100).

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<sup>1</sup> 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.

<sup>2</sup> To post a surety bond, a defendant would obtain the services of a bail bondsman, who typically charges 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.

<sup>3</sup> Section 903.046, F.S.

Pretrial programs are not uniform in their approach or activity. For different jurisdictions, their focus and scope may vary. Also their physical location within the criminal justice system (probation departments, jails, independent agencies) impacts the direction the agencies take. Some are concerned about reducing jail crowding, while others primarily focus on the supervision of those who are released. Many programs only interview target populations whom they think they can help, while other programs interview everyone who is arrested and walks through the door.

... [T]here has been growth in the number of pretrial programs serving smaller jurisdictions as well as a growth in the programs housed in probation departments and jails along with a decline in those programs in the courts. As technology increases, pretrial programs are able to offer more conditions of release that are even less restrictive than those before including on site drug testing and electronic monitoring.

[A] 2001 survey had identified 88 new pretrial services programs since 1990, which is by far the biggest growth in pretrial programs since the programs were introduced in the 1960s. Currently there are several hundred Pretrial Services Programs throughout the United States.<sup>4</sup>

Examples of services that may be performed by a pretrial release program include:

- Interviewing arrestees booked into the county jail;
- Attending first appearances to assist judges in making release decisions;
- Providing court-ordered release and monitoring of defendants;
- Notifying defendants of required court dates;
- Enforcing court-ordered release conditions (e.g., drug testing);
- Providing electronic monitoring.<sup>5</sup>

### 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 register<sup>6</sup> 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:

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<sup>4</sup> Pretrial Justice Institute, *History of Pretrial Services Programs*, <http://www.pretrial.org/html/pretrial.htm> (citing 2001 survey data from the Pretrial Services Resource Center) (last visited April 18, 2008).

<sup>5</sup> See, e.g., Leon County, *Probation Division Supervised Pretrial Release Program*, <http://www.leoncountyfl.gov/Probation/index.asp> (follow link to “Supervised Pre-trial Release”) (last visited April 18, 2008).

<sup>6</sup> 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 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;
- The number of warrants that 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 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 Courts 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 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;
- 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;<sup>7</sup>
- 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; and
- Any additional information deemed necessary by the chief judge of the circuit or the Office of the State Courts Administrator.

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<sup>7</sup> 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.

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. (See **Related Issues** section of this analysis, below.)

### **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.<sup>8</sup> 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.

### **Effective Date**

The bill provides an effective date of July 1, 2008.

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<sup>8</sup> Section 903.286, F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

If a pretrial release program commits a second occurrence of noncompliance with the register or reporting requirements, the bill requires the chief judge to order the program to show why it should not be held in contempt. This provision may raise separation of powers concerns if it is viewed as compelling a court to use its contempt power or prescribing court practice and procedure. Punishment for contempt is an inherent court power and is independent of any express or special statutory grant. The power is viewed as “an incident essential to the execution and maintenance of judicial authority.”<sup>9</sup>

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

Most pretrial release programs are funded by local entities such as counties and sheriffs' 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 affected, 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 development would have the effect of

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<sup>9</sup> *Ducksworth v. Boyer*, 125 So. 2d 844, 845 (Fla. 1960).

increasing the number of defendants who would remain in county jails prior to the disposition of their criminal cases.

The Office of the State Courts Administrator reports that the bill will have some fiscal impacts on the chief judges of the circuits, with regard to monitoring pretrial release programs. The office notes that the exact impact is not known “due to the unavailability of data needed to establish the increase in judicial workload and time resulting from a possible increase in show cause hearings to determine whether non-complying pretrial release programs are in contempt of court.”<sup>10</sup>

**VI. Technical Deficiencies:**

None.

**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.)

**CS by Judiciary on April 16, 2008:**

The committee substitute removes the section of the bill amending s. 903.09, F.S., relating to justification of sureties and providing that those requirements apply to cash bond deposits. The committee substitute also makes technical and organizational revisions to the portion of the bill prescribing the annual report required of pretrial release programs.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>10</sup> Office of the State Courts Administrator, Analysis of Senate Bill 2676, March 3, 2008 (on file with the Senate Committee on Judiciary).