

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 265 Sexual Offenders and Predators

**SPONSOR(S):** Judiciary Committee; Harrell and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 1 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	14 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee	17 Y, 0 N, As CS	Cunningham	Havlicak

### SUMMARY ANALYSIS

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges. Article I, section 14, of the Florida Constitution provides that 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 a municipal or county ordinance is entitled to pretrial release on reasonable conditions.

Bail, one of the most common forms of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute contains an extensive list of factors a court must consider when determining whether to release a defendant on bail or other conditions, including, but not limited to, the defendant's criminal history, family ties, danger to the community, and whether the defendant is on probation or parole.

The bill adds the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S., is required to register as a sexual offender under s. 943.0435, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.
- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S., is required to register as a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

In January, 2011, there were 32,692 registered sexual offenders and 7,743 registered sexual predators in Florida. It is unknown how many of these persons are arrested each year. The bill prohibits such persons from being released on bail or surety bond until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

This bill takes effect July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Pretrial Release

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.<sup>1</sup> Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.<sup>2</sup>

Article I, section 14, of the Florida Constitution provides that 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 a municipal or county ordinance is entitled to pretrial release on reasonable conditions. The accused may be detained 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.<sup>3</sup>

Bail, one of the most common forms of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute further specifies that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, courts must consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.<sup>4</sup>
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.<sup>5</sup>

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<sup>1</sup> Report No. 10-08, "Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed," Office of Program Policy Analysis & Government Accountability, January 2010.

<sup>2</sup> *Id.*

<sup>3</sup> Art. I, s. 14, Fla. Const.

<sup>4</sup> Section 903.046(2)(d), F.S., specifies that any defendant who failed to appear on the day of any required court proceeding in the case at issue, but who later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Section 903.046(2)(d), F.S., also specifies that notwithstanding anything in s. 903.046, F.S., the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear; and that s. 903.046, F.S., may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

<sup>5</sup> Section 903.046(2)(d), F.S., specifies that it is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social

- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of ch. 874, F.S.,<sup>6</sup> or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.<sup>7</sup>

#### Pretrial Release – Offenders on Community Supervision

Section 948.06, F.S., sets forth the procedures used when an offender on probation<sup>8</sup> or community control<sup>9</sup> violates the terms and conditions of their supervision. Offenders arrested for violating the terms and conditions of community supervision are arrested and brought before the sentencing court.<sup>10</sup> Generally, if the offender denies having violated the terms of supervision, the court has the option to commit the offender to jail, release the offender with or without bail to await further hearing, or dismiss the charge.<sup>11</sup>

In certain instances, courts are limited or prohibited from granting pretrial release to offenders arrested for violating their terms of supervision. Section 948.06(4), F.S., requires the court to make a finding that the following offenders are not a danger to the public before releasing the offender on bail:

- Offenders who are under supervision for any offense prescribed in ch. 794., s. 800.04(4), (5), and (6), s. 827.071, or s. 847.0145, F.S.<sup>12</sup>
- Offenders are registered sexual offenders or sexual predators.<sup>13</sup>
- Offenders who are under supervision for a criminal offense for which the offender would meet the sexual predator or sexual offender registration requirements in ss. 775.21, 943.0435, or 944.607, F.S., but for the effective date of those sections.

The statute also prohibits a court from granting pretrial release to an offender arrested for violating their terms of supervision (other than violations related to a failure to pay costs) and who is:

- A violent felony offender of special concern;<sup>14</sup>
- On supervision for any offense committed on or after March 12, 2007, and who is arrested for any qualifying offense; or<sup>15</sup>

concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

<sup>6</sup> Chapter 874, F.S., relates to criminal gang enforcement and prevention.

<sup>7</sup> Section 903.046, F.S.

<sup>8</sup> Section 948.001, F.S., defines the term “probation” as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

<sup>9</sup> Section 948.001, F.S., defines the term “community control” as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced.

<sup>10</sup> Section 948.06, F.S.

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

<sup>12</sup> Chapter 794, F.S., relates to sexual battery. Section 800.04, F.S., relates to lewd and lascivious offenses upon or in the presence of a person less than 16 years of age. Section 827.071, F.S., relates to sexual performance by a child. Section 847.0145, F.S., relates to selling or buying of minors.

<sup>13</sup> Sections 775.21, 943.0435, and 944.607, F.S., set forth the criteria one must meet to be considered a sexual offender or sexual offenders. The statutes also provide registration requirements for sexual offenders and sexual predators.

<sup>14</sup> The term “violent felony offender of special concern” is defined in s. 948.06(8)(b), F.S.

<sup>15</sup> The term “qualifying offense” is defined in s. 948.06(8)(c), F.S., and includes offenses that qualify someone as a sexual offender.

- On supervision, has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., a three-time violent felony offender as defined in s. 775.084(1)(c), F.S., or a sexual predator under s. 775.21, F.S., and who is arrested for committing a qualifying offense on or after March 12, 2007.

Such persons must remain in custody pending the resolution of the violation.<sup>16</sup>

### **Effect of the Bill**

The bill amends s. 903.046, F.S., to add the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S.,<sup>17</sup> is required to register as a sexual offender under s. 943.0435, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance<sup>18</sup> on the case in order to ensure the full participation of the prosecutor and the protection of the public.
- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S., is required to register as a sexual predator<sup>19</sup> under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 2. This bill takes effect July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

In January, 2011, there were 32,692 registered sexual offenders and 7,743 registered sexual predators in Florida. It is unknown how many of these persons are arrested each year. The bill prohibits such persons from being released on bail or surety bond until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

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<sup>16</sup> Section 948.06(8)(d), F.S.

<sup>17</sup> Chapter 316, F.S., is the State Uniform Traffic Control chapter.

<sup>18</sup> See Rule 3.130, Fla. R. Crim. Proc.

<sup>19</sup> In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 14, 2011, the Judiciary Committee adopted one amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment specified that the court, when considering whether to release a defendant on bail, can consider whether the defendant, *other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S.*, is required to register as a sexual offender or predator; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

This analysis is drafted to the Committee Substitute.