

**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 Committee on Judiciary

**BILL:** CS/ SB 1372

**INTRODUCER:** Judiciary Committee and Senator Bradley

**SUBJECT:** Pretrial Detention

**DATE:** March 13, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			CJ	
3.			ACJ	
4.			AP	
5.				
6.				

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 1372 provides an additional factor for a court to consider in determining whether to order the pretrial detention of a criminal defendant.

The court may order pretrial detention if:

- The defendant was previously sentenced, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal or the state attorney files a notice seeking that the defendant be sentenced as such;
- A substantial probability exists that the defendant committed the current crime charged; and
- The court finds that no conditions of release can reasonably protect the community from risk of physical harm or ensure the defendant’s presence at trial.

This bill substantially amends section 907.041, Florida Statutes.

## II. Present Situation:

### Pretrial Release in the Constitution

Article I, Section 14, of the Florida Constitution provides, in part:

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 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.

### Florida Law on Pretrial Release

Florida law provides a presumption in favor of release on nonmonetary conditions for a defendant pending trial.<sup>1</sup> The presumption applies unless the person is charged with a dangerous crime, including:

- 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;
- Sexual offenses against children;
- Burglary of a dwelling;
- Stalking and aggravated stalking;
- Domestic violence;
- Home invasion robbery;
- Terrorism;
- Manufacturing of controlled substances; or
- Attempting or conspiring to commit any of these crimes.<sup>2</sup>

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<sup>1</sup> Section 907.041(3), F.S.

<sup>2</sup> Section 907.041(4)(a), F.S.

A court must impose monetary conditions upon the pretrial release of a defendant charged with one of the enumerated dangerous crimes if the court finds that monetary conditions are necessary to:

- Assure the presence of the defendant at criminal proceedings including trial;
- Protect the community from the risk of physical harm; or
- Ensure the integrity of the judicial process.<sup>3</sup>

Section 907.041(4)(c), F.S., authorizes the court to order pretrial detention of the defendant if the court finds a substantial probability that:

- The defendant previously violated conditions of release and no other conditions of release are reasonably likely to assure the defendant's presence at court proceedings.
- The defendant attempted to, or has engaged in witness, juror, or judicial officer tampering and no condition of release will reasonably prevent the defendant from obstructing the judicial process.
- The defendant is charged with, and a substantial probability exists that the defendant committed the crime of trafficking in controlled substances, and that no conditions of release will reasonably assure the defendant's presence at court proceedings.
- The defendant is charged with, and a substantial probability exists that the defendant committed DUI manslaughter, and the defendant poses a threat of harm to the community as evidenced through other driving violations, including driving while with a suspended license.
- The defendant poses a threat of harm to the community, which the court can glean from the dangerous nature of the present crime itself.
- The defendant was on probation, parole, or other release for a dangerous crime at the time of the current offense.
- The defendant violated a condition of pretrial release or bond, and the court finds that no conditions of release can reasonably protect the community from risk of physical harm or assure the presence of the defendant at court proceedings.

The court is required to hold a pretrial detention hearing within 5 days after the pretrial detention filing by the state attorney.<sup>4</sup> The burden of proof is on the state attorney to demonstrate the need for pretrial detention.<sup>5</sup>

## **Enhanced Penalties**

### ***Prison Release Reoffender***

A state attorney can seek enhanced sentencing of a defendant whom the court designates as a prison releasee reoffender.<sup>6</sup> To establish a defendant as a prison releasee reoffender, the prosecutor must show:

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<sup>3</sup> Section 907.041(3)(a), F.S.

<sup>4</sup> Section 907.041(4)(f), F.S.

<sup>5</sup> Section 907.041(4)(g), F.S.

<sup>6</sup> Section 775.082(9)(a)3., F.S.

- The defendant committed or attempted to commit certain crimes. These include the crimes of treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery or robbery; arson; kidnapping; aggravated assault with a deadly weapon, battery, or stalking; aircraft piracy; and felonies involving physical force;<sup>7</sup> and
- The defendant attempted or committed the crime within 3 years after release from incarceration at a state correctional facility or while incarcerated at or as an escapee from a state correctional facility.<sup>8</sup>

Enhanced sentencing requires the court to sentence the defendant to the maximum prison sentence provided in law for a criminal charge.<sup>9</sup> A court sentencing a prison releasee reoffender must impose the following sentence:

- For a life felony, life imprisonment.
- For a first degree felony, 30 years imprisonment.
- For a second degree felony, 15 years imprisonment.
- For a third degree felony, 5 years imprisonment.<sup>10</sup>

### ***Habitual Felony Offender***

The court can sentence a defendant as a habitual felony offender if the defendant has two or more prior felony convictions and committed the current felony:

- While serving a sentence, in prison or while under state supervision; or
- Within 5 years after the date of conviction of the last prior felony or 5 years after release from a sentence or state supervision.

The court can impose an extended term of sentencing as follows:

- For a first degree or life felony, life imprisonment.
- For a second degree felony, up to 30 years imprisonment.
- For a third degree felony, up to 10 years imprisonment.<sup>11</sup>

### ***Habitual Violent Felony Offender***

The court can sentence a defendant as a habitual violent felony offender if the defendant has a current felony charge and was previously convicted of a qualifying felony or an attempt or conspiracy to commit a qualifying felony. Prior qualifying felony convictions include convictions for crimes such as arson, sexual battery, robbery, kidnapping, aggravated abuse of a child or an elderly or disabled person, murder, manslaughter, armed burglary, or aggravated battery or stalking.

<sup>7</sup> Section 775.082(9)(a)1., F.S.

<sup>8</sup> Section 775.082(9)(a)2., F.S.

<sup>9</sup> Section 775.082(3), F.S. provides: Unless otherwise designated in law, for a first degree felony, imprisonment may not exceed 30 years, unless law provides for a life felony, in which case, a term of up to life imprisonment. For a second degree felony, a term of up to 15 years and for a third degree felony, a term of up to 5 years.

<sup>10</sup> Section 775.082(9)(a)3., F.S.

<sup>11</sup> Section 775.084(4)(a), F.S.

For the court to designate a defendant as a habitual violent felony offender, the defendant must have committed the current felony:

- While serving a prison sentence or while under state supervision; or
- Within 5 years after the date of the prior conviction or release from a prison sentence or state supervision.

The court may impose an extended term of sentencing as follows:

- For a first degree or life felony, life imprisonment and no eligibility for release for 15 years.
- For a second degree felony, for up to 30 years, and no eligibility for release for 10 years.
- For a third degree felony, for up to 10 years, and no eligibility for release for 5 years.<sup>12</sup>

### ***Three-time Violent Felony Offender***

The court must sentence a defendant as a three-time violent felony offender if:

- The defendant has been previously convicted of committing or attempting to commit, two or more qualifying felony offenses as an adult. The offenses include arson; sexual battery; robbery; kidnapping; murder; manslaughter; aggravated battery or stalking; and carjacking;<sup>13</sup> and
- At the time of the current offense, the defendant was serving a prison sentence or other sentence; or
- The defendant committed the current offense within 5 years after the conviction of the most recent qualifying offense or within 5 years after release from a prison sentence or state supervision.<sup>14</sup>

The court must impose a mandatory minimum term of imprisonment for a three-time violent felony offender as follows:

- For a life felony, life imprisonment.
- For a first degree felony, 30 years imprisonment.
- For a second degree felony, 15 years imprisonment.
- For a third degree felony, 5 years imprisonment.<sup>15</sup>

### ***Violent Career Criminal***

A violent career criminal is a defendant with three or more previous adult qualifying convictions.<sup>16</sup> The court must impose imprisonment for a violent career criminal who:

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<sup>12</sup> Section 775.084(4)(b), F.S.

<sup>13</sup> Section 775.084(1)(c)1., F.S.

<sup>14</sup> Section 775.084(1)(c)2., F.S.

<sup>15</sup> Section 775.084(4)(c), F.S.

<sup>16</sup> Section 775.084(1)(d), F.S.

- Previously served in a state or federal correctional facility; and
- Commits a qualifying offense while serving a prison sentence, other sentence, or while under state supervision; or
- Commits a qualifying offense within 5 years after the conviction of another qualifying felony.<sup>17</sup>

Qualifying convictions include forcible felonies; aggravated stalking; aggravated abuse against children, elderly persons, or disabled adults; lewd or lascivious battery, molestation, conduct, or exhibition; or escape.<sup>18</sup>

The court must impose a mandatory minimum term of imprisonment for a three-time violent felony offender as follows:

- For a life felony or a first degree felony, life imprisonment.
- For a second degree felony, up to 40, and no less than 30 years imprisonment.
- For a third degree felony, up to 15 years, and no less than 10 years imprisonment.<sup>19</sup>

### **III. Effect of Proposed Changes:**

This bill provides an additional basis for the court to consider in determining whether to order pretrial detention.

The bill authorizes the court to order pretrial detention if:

- The defendant has been previously sentenced as a prison releasee reoffender, habitual violent felony offender, a three-time violent felony offender, or a violent career criminal or the state attorney files a notice seeking that the defendant be sentenced as one of these offenders; and
- A substantial probability exists that the defendant committed the current crime charged; and
- The court finds no conditions of release to reasonably protect the community from risk of physical harm or assure the defendant's presence at trial.

The provisions of this bill are permissive. Due to the nature of the circumstances surrounding this type of defendant's criminal record, a court may be authorized to order pretrial detention under other existing laws.

The bill takes effect July 1, 2013.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>17</sup> Section 775.084(1)(d)2. and 3., F.S.

<sup>18</sup> Section 775.084(1)(d)1., F.S.

<sup>19</sup> Section 775.084(4)(d), F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Any effect on jail beds is indeterminate at this time. The changes in this bill will not affect the number of prison beds needed, as pretrial detention is served in jail. In fact, to the extent that more defendants are detained pretrial under the provisions of this bill, the credit for time served during pretrial detention may have a negligible positive impact on prison bed costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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 March 12, 2013:**

The committee substitute clarifies that:

- The sentence that may serve as the basis for pretrial detention of a defendant is a previous sentence as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal.
- The offense referred to for purposes of the substantial probability standard is the current offense.

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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