

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 (PCB CRJS 13-03) Pretrial Detention

SPONSOR(S): Criminal Justice Subcommittee; Eagle and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	10 Y, 1 N	Jones	Cunningham
1) Judiciary Committee	16 Y, 1 N	Jones	Havlicak

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. 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.

Section 907.041(4)(c), F.S., lists numerous instances in which a court is authorized to detain a defendant prior to trial. For example, a court may detain a defendant if the court finds that the defendant:

- Is charged with specified offenses;
- Has threatened a potential witness with the intent to obstruct justice; or
- The defendant poses the threat of harm to the community.

The bill amends s. 907.041(4)(c), F.S., to add the following additional instances in which a court may detain a defendant prior to trial:

- When the court finds that the defendant has been sentenced, pursuant to ss. 775.082(9) or 775.084, F.S., as a prison releasee reoffender, a habitual violent felony offender, a three-time violent felony offender, or a violent career criminal; or
- When the state attorney files a notice seeking that the defendant be sentenced pursuant to ss. 775.082(9) or 775.084, F.S., as a prison releasee reoffender, a habitual violent felony offender, a three-time violent felony offender, or a violent career criminal.

In addition to the above, a judge must find that there is a substantial probability that the defendant committed the offense charged and there are no conditions of release that can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial to detain a defendant.

The bill could have a negative jail bed impact on local governments because it provides another instance in which a judge can order pretrial detention.

The bill is effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pretrial Detention

Article I, Section 14, of the Florida Constitution, 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.

Section 907.041(4)(c), F.S., authorizes a trial court to detain a defendant prior to trial if it finds there is a substantial probability based on the defendant's past and present patterns of behavior, the criteria in s. 903.046, F.S.,¹ and any other relevant facts, that any of the following circumstances exists:

- The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;
- The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;
- The defendant is charged with trafficking in controlled substances as defined by s. 893.135, F.S., that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings;
- The defendant is charged with DUI manslaughter, as defined by s. 316.193, F.S., and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community;²
- The defendant poses the threat of harm to the community;³
- The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed; or
- The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial.

¹ Section 903.046, F.S., contains criteria that a court must consider when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be.

² Conditions that would support a finding by the court that the defendant poses a threat of harm to the community include, but are not limited to, any of the following:

- The defendant has previously been convicted of any crime under s. 316.193, F.S., or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193, F.S.;
- The defendant was driving with a suspended driver's license when the charged crime was committed; or
- The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver's license was suspended or revoked in violation of s. 322.34, F.S. Section 907.041(4)(c)4., F.S.

³ The court may so conclude if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. Section 907.041(4)(c)5., F.S.

Sentencing Enhancements for Certain Offenders

Section 775.082., F.S., requires a court to impose a mandatory minimum prison sentence if a defendant is classified as a “prison releasee reoffender” and s. 775.084, F.S., allows a court to impose an extended sentence for a defendant who is classified as a “habitual violent felony offender”, a “three-time violent felony offender”, or a “violent career criminal.”

Prison Releasee Reoffender

Section 775.082(9), F.S., requires a defendant to be sentenced to specified mandatory minimum terms of imprisonment if classified as a “prison releasee reoffender.” To be classified as a “prison releasee reoffender” the defendant must have committed or attempted to commit one of the following crimes within three years of being released from prison:

- Treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; arson; kidnapping; aggravated assault with a deadly weapon; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; any felony that involves the use or threat of physical force or violence against an individual; armed burglary; burglary of a dwelling or burglary of an occupied structure; or any felony violation of s. 790.07, s. 800.04, s. 827.03, s. 827.071, or s. 847.0135(5), F.S.⁴

The term also includes any defendant who committed or attempted to commit any offense listed above while the defendant was serving a prison sentence or on escape status from a correctional facility.⁵

Habitual Violent Felony Offender

To be classified as a “habitual violent felony offender,” the court must find that the defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

- Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.⁶

The court must also find that the felony for which the defendant is to be sentenced was committed:

- While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
- Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.⁷

Three-Time Violent Felony Offender

To be classified as a “three-time violent felony offender” the court must find the defendant has been convicted as an adult two or more times of a felony and two or more of such convictions were for the felonies listed above (including home invasion/robbery, carjacking, or a similar offense in another jurisdiction) or an attempt to commit any such felony offense.⁸ The court must also find that the felony which the defendant is being sentenced for was committed:

- While the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any enumerated offense; or
- Within 5 years after the date of the conviction of the last prior enumerated offense, or within 5 years after the defendant’s release from a prison sentence, probation, community control, or

⁴ Section 775.082(9), F.S.

⁵ *Id.*

⁶ Section 775.084(1)(b), F.S.

⁷ *Id.*

⁸ Section 775.084(1)(c), F.S.

other sentence imposed as a result of a prior conviction for any enumerated offense, whichever is later.⁹

Violent Career Criminal

To be classified as a “violent career criminal” the court must find that the defendant has been convicted three or more times of:

- Any forcible felony, as described in s. 776.08, F.S.; aggravated stalking, as described in s. 784.048(3) and (4), F.S.; aggravated child abuse, as described in s. 827.03(2), F.S.; aggravated abuse of an elderly person or disabled adult, as described in s. 825.102(2), F.S.; lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in ss. 800.04 or 847.0135(5), F.S.; escape, as described in s. 944.40, F.S.; or a felony violation of ch. 790, F.S., involving the use or possession of a firearm.

In addition, the court must find that the defendant has been incarcerated in a state or federal prison, and that the felony which the defendant is being sentenced for was committed on or after October 1, 1995, and:

- While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
- Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.¹⁰

Effect of the Bill

The bill amends s. 907.041(4)(c), F.S., to add the following additional instances in which a court may detain a defendant prior to trial:

- When the court finds that the defendant has been sentenced, pursuant to ss. 775.082(9) or 775.084, F.S., as a prison releasee reoffender, a habitual violent felony offender, a three-time violent felony offender, or a violent career criminal; or
- When the state attorney files a notice seeking that the defendant be sentenced pursuant to ss. 775.082(9) or 775.084, F.S., as a prison releasee reoffender, a habitual violent felony offender, a three-time violent felony offender, or a violent career criminal.

In addition to the above, a judge must find that there is a substantial probability that the defendant committed the offense charged and there are no conditions of release that can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial to detain a defendant.

B. SECTION DIRECTORY:

Section 1. Amends s. 907.041, F.S., relating to pretrial detention and release.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁹ *Id.*

¹⁰ Section 775.084(1)(d), F.S.

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill could have a negative jail bed impact because it provides another circumstance in which a judge can order pretrial detention.

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.