

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	HB 7035	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Criminal Justice Subcommittee; Eagle and others	119 Y's	0 N's
<b>COMPANION BILLS:</b>	(CS/SB 1372)	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

HB 7035 passed the House on April 12, 2013. The bill was amended by the Senate on April 26, 2013, and subsequently passed the House on May 2, 2013. The bill includes portions of CS/HB 7031 and CS/SB 1114.

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., is required to register as a sexual offender under s. 943.0435, F.S., or 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.

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, 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 an insignificant negative jail bed impact on local governments because it:

- Prohibits sexual predators and offenders from being released on bail or surety bond until first appearance; and
- Provides another circumstance in which a judge can order pretrial detention.

The bill was approved by the Governor on June 14, 2013, ch. 2013-214, L.O.F., and will become effective on July 1, 2013.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Bail Determinations**

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>

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. 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>3</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>4</sup>
- 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>5</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

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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> 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>4</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 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>5</sup> Chapter 874, F.S., relates to criminal gang enforcement and prevention.

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>6</sup>

### **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.,<sup>7</sup> 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;<sup>8</sup>
- The defendant poses the threat of harm to the community;<sup>9</sup>
- 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.

### **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

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<sup>6</sup> Section 903.046, F.S.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.

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.<sup>10</sup>

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.<sup>11</sup>

#### 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.<sup>12</sup>

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.<sup>13</sup>

#### 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.<sup>14</sup> 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

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

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

<sup>12</sup> Section 775.084(1)(b), F.S.

<sup>13</sup> *Id.*

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

other sentence imposed as a result of a prior conviction for any enumerated offense, whichever is later.<sup>15</sup>

### 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.<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., or 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<sup>18</sup> on the case in order to ensure the full participation of the prosecutor and the protection of the public.

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.

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<sup>15</sup> *Id.*

<sup>16</sup> Section 775.084(1)(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.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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 prohibits sexual predators and offenders 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.

The bill also 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.