

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 731 Bail Bonds
SPONSOR(S): Santiago
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N, As CS	White	White
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S., and it requires an arrestee to pay a set sum of money to the court to be released from jail. As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent. A bail bond agent is generally enlisted by paying a nonrefundable fee to the bond agent equal to 10 percent of the bond amount set by the court. This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release.

The bill makes a number of changes to ch. 903, F.S., including:

- Narrows the general responsibilities and liabilities of a bail bond agent;
- Removes any breach of the bond as a basis on which a forfeiture can occur, and narrows it to only a failure to appear before the court in a proceeding for which the surety bond was posted;
- Revises the bases on which a forfeiture can be discharged;
- Expands the circumstances in which the clerk of court may automatically discharge a bond to include circumstances where the defendant is arrested and returned to the county of the jurisdiction of the court or has posted a new bond for the case at issue before judgment;
- Removes judicial discretion to reduce the amount remitted to the bond agent in a remission of forfeiture order;
- Limits the requirements for cancellation of a bond to exclude cases in which a bond has been declared forfeited before the 36-month expiration; and
- Adds placement in any court-ordered program, including a residential mental health facility, to the list of circumstances in which a bond is not considered to guarantee the defendant's appearance.

The bill creates flexibility for judges and bail bond agents to remedy and resolve breaches of a bond. To the extent that a greater number of bonds are reinstated after forfeiture, and to the extent that signing onto bonds is more affordable for the bail bond agent, this may increase the number of arrestees that are able to post bail, thereby reducing the need for jail beds.

The bill takes effect on July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pretrial Release

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 grounds.¹ Judges are required to presume that nonmonetary conditions² are sufficient for any person to be granted pretrial release³ who is not charged with a dangerous crime.⁴ Although courts have the authority to impose any number of pretrial release conditions, courts must impose conditions of release that require the defendant to refrain from criminal activity of any kind and to refrain from contact with the victim.⁵ If a defendant violates the conditions of pretrial release imposed by the court, the person may be arrested and held to answer before the court that has jurisdiction to try the defendant.⁶

Bail Bonds

Issuance of a Bail Bond

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S., and requires an arrestee to pay a set sum of money to the court to be released from jail.⁷ As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond⁸ executed by a bail bond agent licensed pursuant to ch. 648, F.S. A bail bond agent is generally enlisted by paying a nonrefundable fee to the bail bond agent equal to 10 percent of the bail bond amount set by the court.⁹ This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release. Section 903.045, F.S., provides that a criminal surety bail bond:

[S]hall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.

Forfeiture of a Bail Bond

¹ Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. Proc.

² Nonmonetary conditions include any condition that does not require the payment of a financial guarantee, such as releasing the arrestee on his or her recognizance, placement in a pretrial release program, or placing restrictions on the arrestee's travel, association, or place of abode. *See* FLA. R. CRIM. P. 3.131.

³ s. 907.041(3)(a), F.S.

⁴ "Dangerous crimes" include: 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; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of chapter 893; and attempting or conspiring to commit any such crime. s. 907.041, F.S.

⁵ s. 903.047, F.S.

⁶ FLA. R. CRIM. P. 3.131; s. 903.0471, F.S.; s. 907.041, F.S.

⁷ The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges. *Universal Bail Bonds v. Florida*, 929 So.2d 697 (Fla. 3rd DCA 2006)

⁸ ss. 903.011, and 903.105, F.S.

⁹ Office of Program Policy Analysis & Gov't Accountability, *Most Pretrial Release Programs Continue to Comply with Statutory Reporting Requirements*, Report No. 12-13 (Feb. 2013) at 2.

If there is a breach of the bond, which may be caused by a failure to appear before the court, or for any other violation of the pretrial release conditions,¹⁰ the court generally must declare the bond and any money deposited to be forfeited.¹¹ However, this forfeiture requirement does not apply, even if there is a breach of the bond, when the information, indictment, or affidavit in the criminal case was not filed within six months of arrest, or the clerk of the court failed to provide the agent with at least 72 hours' notice of the time and date of the required appearance for the defendant.¹² Within five days after forfeiture of a bond, the court must mail or electronically transmit a notice to the bail bond agent and the surety company.¹³ The value of the forfeited bond must be paid by the bail bond agent within 60 days of the date the notice was mailed or transmitted.¹⁴

Discharge of a Bail Bond Forfeiture

In specific circumstances a bond forfeiture can be effectively cancelled when a discharge is entered by the court. Discharges may not be entered for any reason other than the reasons specified in s. 903.26, F.S. Within 60 days after the bond forfeiture, the court shall enter a discharge as follows:

- The court makes a determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant's control;
- The court makes a determination that, at the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- The defendant surrenders or is arrested, if the delay has not thwarted the proper prosecution of the defendant.¹⁵

In addition to the above, the clerk of court must discharge the forfeiture without further order of the court if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment. The bail bond agent is required to pay the costs associated with returning the defendant to the county of jurisdiction, as a condition of the clerk discharging the forfeiture.¹⁶

Remission of a Bail Bond Forfeiture

Remission of a bond forfeiture acts as anywhere from a partial to a total reimbursement of the bail bond agent's loss of the forfeited amount. Discharges may not be entered for any reason other than the reasons specified in s. 903.28, F.S. The limited circumstances in which a bail bond agent may recoup losses arising from a bond forfeiture are as follows:

- Pursuant to a request filed within two years of the forfeiture, the court determines that there was no breach of the bond.
- If the defendant is arrested or surrenders within 90 days of the forfeiture, and the arrest or surrender was largely procured by the bail bond agent, or the bail bond agent substantially attempted to procure the same, the court may direct remission of up to 100 percent of the bond amount.
- If the defendant is arrested or surrenders within 270 days of the forfeiture, and the arrest or surrender was largely procured by the bail bond agent, or the bail bond agent substantially attempted to procure the same, the court may direct remission of up to 90 percent of the bond amount.
- If the defendant is arrested or surrenders within 1 year of the forfeiture, and the arrest or surrender was largely procured by the bail bond agent, or the bail bond agent substantially attempted to procure the same, the court may direct remission of up to 85 percent of the bond amount.
- If the defendant is arrested or surrenders within 2 years of the forfeiture, and the arrest or surrender was largely procured by the bail bond agent, or the bail bond agent substantially

¹⁰ If the defendant appears at some point on the date of his or her required appearance, the court in its discretion is authorized to direct the clerk to set aside a forfeiture of the bond. Any appearance of the defendant after that day, however, constitutes forfeiture of the bond. s. 903.26(2)(b), F.S.

¹¹ s. 903.26(2)(a), F.S.

¹² s. 903.26(1), F.S.

¹³ s. 903.26(2)(a), F.S.

¹⁴ *Id.*

¹⁵ s. 903.26(5), F.S.

¹⁶ s. 903.26(8), F.S.

attempted to procure the same, the court may direct remission of up to 50 percent of the bond amount.

Cancellation of a Bail Bond

A cancellation of a bond concludes the bond and finalizes the extent of the bail bond agent's liabilities arising from the bond in question. Within 10 days after the conditions of a bond have been satisfied or a bond forfeiture has been discharged or remitted, the court shall order the bond to be canceled.¹⁷ The original bond shall expire 36 months after the bond was posted for the release of the defendant.¹⁸ In any case where formal charges have not been filed against the defendant within 365 days after arrest, the court shall order the bond canceled unless the state can show good cause for the failure. The conditions of a bond will be considered satisfied in any of the following circumstances:

- An adjudication of guilt or innocence.
- An acquittal.
- A withholding of an adjudication of guilt.

A bond is not considered to guarantee certain circumstances in which a defendant may be released, including:

- Deferred sentences.
- Appearance during or after a presentence investigation.
- Appearance during or after appeals.
- Conduct during or appearance after admission to a pretrial intervention program.
- Payment of fines.
- Attendance at educational or rehabilitation facilities the court otherwise provides in the judgment.

Effect of Bill

The bill narrows the general responsibilities and liabilities of a bail bond agent to:

- Require a bail bond agent to ensure that the defendant appears at all criminal proceedings for which the surety bond was posted; and
- The failure of the defendant to appear for a subsequent proceeding in the case for which the surety bond was posted will act as a breach by the bail bond agent of the commitments and obligations.

The bill removes *any* breach of the bond as a basis on which a forfeiture can occur, and narrows it to only a failure to appear before the court in proceeding for which the surety bond was posted. The bases on which a forfeiture can be discharged are revised to include:

- A determination that it was impossible for the defendant to appear as required or within 60 days after the required appearance due to circumstances beyond the defendant's control.
- A determination that, at the time of the required appearance or within 60 days after the required appearance, the defendant was confined in any county, municipal, state, federal, or immigration detention facility; or is deceased.
- A determination that the state is unwilling to seek nationwide extradition of the fugitive defendant within 10 days after a request by the surety to do so, and contingent upon the surety agent's consent to pay all transportation costs incurred by an official in returning the defendant to the jurisdiction of the court, up to the penal amount of the bond.

The bill expands the circumstances in which the clerk of court may automatically discharge a bond to include circumstances where the defendant is arrested and returned to the county of the jurisdiction of the court or has posted a new bond for the case at issue before judgment. This automatic discharge may be entered without further hearing and order of the court.

The bill removes judicial discretion to reduce the amount remitted to the bail bond agent in a remission of forfeiture order. The bill provides that the judge must order remission amounts as follows:

¹⁷ s. 903.31(1), F.S.

¹⁸ *Id.*

- Remit 100 percent of the forfeiture when the defendant surrenders or is arrested within 90 days of the forfeiture.
- Remit 95 percent of the forfeiture when the defendant surrenders or is apprehended within 180 days of the forfeiture.
- Remit 90 percent of the forfeiture when the defendant surrenders or is apprehended within 270 days of the forfeiture.
- Remit 85 percent of the forfeiture when the defendant surrenders or is apprehended within 1 year of the forfeiture.
- Remit 50 percent of the forfeiture when the defendant surrenders or is apprehended within 2 years of the forfeiture.

The bill limits the requirements for cancellation of a bond to exclude cases in which a bond has been declared forfeited before the 36-month expiration. The bill also adds placement in any court-ordered program, including a residential mental health facility, to the list of circumstances in which a bond is not considered to guarantee the defendant's appearance.

B. SECTION DIRECTORY:

Section 1. Amends s. 903.045, F.S., relating to nature of criminal surety bail bonds.

Section 2. Amends s. 903.26, F.S., relating to forfeiture of the bond; when and how directed; discharge; how and when made; effect of payment.

Section 3. Amends 903.28, F.S., relating to remission of forfeiture; conditions.

Section 4. Amends s. 903.31, F.S., relating to cancelling the bond.

Section 5. Providing an effective date of July 1, 2016.

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 any 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 creates flexibility for judges and bail bond agents to remedy and resolve breaches of a bond. To the extent that a greater number of bonds are reinstated after forfeiture, and to the extent that signing onto bonds is more affordable for the bail bond agent, this may increase the number of arrestees that are able to post bail, thereby reducing the need for jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates flexibility for judges and bail bond agents to remedy and resolve breaches of a bond. This may reduce losses to bail bond agents related to the forfeiture of bonds.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2016, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made the following changes: (a) clarified that the bill's references to a "failure to appear" mean a failure to appear before the court in a proceeding for which the surety bond was posted; and (b) substituted the term "detention facility" for "jail or prison" and added reference to municipal detention facilities.

This analysis is drafted to the committee substitute adopted by the Criminal Justice Subcommittee.