

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 969 Orders of No Contact
SPONSOR(S): Criminal Justice Subcommittee; Stevenson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Clark	White
2) Judiciary Committee	15 Y, 0 N	Clark	Havlicak

SUMMARY ANALYSIS

Section 903.047, F.S., governs the conditions of pretrial release. The conditions include refraining from criminal activity, refraining from contact with the victim, and complying with any other condition imposed. The requirement that a defendant refrain from contact with the victim is implemented through a no contact order.

An order of no contact generally prohibits a defendant from being near or communicating with a victim. Existing law could be read to require a court to issue an order of no contact to every person who is released on pretrial release if there is a victim. The bill clarifies that courts have the discretion to issue an order of no contact to a person on pretrial release. The order of no contact shall be provided in writing, specifying the applicable prohibited acts before the defendant is released from custody on pretrial release.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Conditions of Pretrial Release

Section 903.047, F.S., governs the conditions of pretrial release. The conditions include refraining from criminal activity, refraining from contact with the victim, and complying with any other condition imposed.¹ The requirement that a defendant refrain from contact with the victim is implemented through a no contact order.

A person who fails to comply with the conditions of pretrial release, if the original arrest was for an act of domestic violence, commits a first degree misdemeanor.² The statute currently requires that the defendant receive a copy of the order of no contact before he or she is released from custody on pretrial release. The order is effective immediately upon issuance and is enforceable for the duration of the pretrial release or until modified by the court.

Existing law could be read to require a court to issue an order of no contact to every person who is released on pretrial release if there is a victim. For example, in *Pilorge v. State*, the District Court of Appeal held that there was insufficient evidence to establish that the defendant was informed of the no contact condition of his pretrial release.³ Pilorge had been arrested for aggravated battery and attempted false imprisonment and was released on bond with the condition of having no contact with the victim pursuant to s. 903.047, F.S.⁴ Subsequently, Pilorge made contact with the victim and was charged with violating a condition of his pretrial release pursuant to s. 741.29, F.S.⁵

The *Pilorge* court found the statute requires the imposition of the no contact condition to be proven by substantial competent evidence in order to convict the person of the crime.⁶ The statute requires that the court impose the no contact condition on a person charged with domestic violence, but it does not create a presumption the defendant knows that he or she is to have no contact.⁷

The Fifth DCA held in *Sheppard v. State* that the state had the burden to prove that the defendant received adequate notice of his pretrial no contact condition.⁸ In *Sheppard*, the court found that “[t]he State has the burden of proving, by substantial, competent evidence, that the condition was imposed on a defendant charged with domestic violence.”⁹

Effect of the Bill

As noted above, an order of no contact generally prohibits a defendant from being near or communicating with a victim. The bill clarifies that courts have the discretion to issue an order of no contact to a person on pretrial release. The order of no contact shall be provided in writing, specifying the applicable prohibited acts before the defendant is released from custody on pretrial release.

¹ s. 903.047, F.S.

² s. 741.29(6), F.S.

³ 876 So. 2d 591 (Fla. 5th DCA 2004).

⁴ *Id.* at 591.

⁵ *Id.* at 592.

⁶ *Id.*

⁷ *Id.* (“As written, this statute requires the court to impose the no contact provision on a person charged with domestic violence. It does not create a presumption that the defendant knows that he or she is to have no contact.”).

⁸ 974 So. 2d 529, 530 (Fla. 5th DCA 2008).

⁹ *Id.* at 530.

B. SECTION DIRECTORY:

Section 1. Amends s. 903.047, F.S., relating to conditions of pretrial release.

Section 2. Provides 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 does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

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

On February 3, 2016, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute moved language in the bill, as filed, to clarify that courts have the discretion, but are not required, to issue an order of no contact to a person on pretrial release.

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