

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 969	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Criminal Justice Subcommittee; Stevenson and others	116 Y's	0 N's
COMPANION BILLS:	SB 1412	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 969 passed the House on March 8, 2016, as SB 1412 as amended. The Senate concurred in the House amendment to the Senate Bill and subsequently passed the bill as amended on March 10, 2016.

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 amends current law to provide that courts are authorized, but not required, to issue an order of no contact to a person on pretrial release. The order of no contact must 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 was approved by the Governor on April 8, 2016, ch. 2016-204, L.O.F., and will become effective on July 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.

An order of no contact generally prohibits a defendant from being near or communicating with a victim. As discussed below, existing law, as amended in 2015, could be interpreted 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.

2015 No Contact Legislation

The italicized language of s. 903.047(1)(b), F.S., below was enacted through the passage of CS/CS/CS/SB 342, ch. 2015-17, L.O.F., during the 2015 Legislative Session:

903.047 Conditions of pretrial release.—

(1) As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant *must*:

(a) Refrain from criminal activity of any kind.

(b) Refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure. *An order of no contact is effective immediately and enforceable for the duration of the pretrial release or until it is modified by the court. The defendant shall receive a copy of the order of no contact which specifies the applicable prohibited acts before the defendant is released from custody on pretrial release. As used in this section, unless otherwise specified by the court, the term “no contact” includes the following prohibited acts:*

1. *Communicating orally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with the victim or any other person named in the order. ...*
2. *Having physical or violent contact with the victim or other named person or his or her property.*
3. *Being within 500 feet of the victim’s or other named person’s residence, even if the defendant and the victim or other named person share the residence.*
4. *Being within 500 feet of the victim’s or other named person’s vehicle, place of employment, or a specified place frequented regularly by such person.*

The 2015 bill analysis indicates that the intent of the bill was to define the basic restrictions imposed on a defendant through a no contact order.³ The analysis also states the requirement that the order be “effective immediately” was intended to prevent a detainee from making harassing phone calls to a victim while in jail awaiting a pretrial release.

¹ s. 903.047, F.S.

² s. 741.29(6), F.S.

³ Fla. S. Comm. on Rules, CS/CS/CS/SB 342 (2015), Staff Analysis 4 (March 20, 2015), available at <https://www.flsenate.gov/Session/Bill/2015/0342/Analyses/2015s0342.rc.PDF>.

There is no mention in the bill analysis that the bill created statutorily-mandated court orders. However, it is possible to read existing law as requiring a court to enter an order of no contact for all cases for which there is a victim and to serve the defendant with the order before release from jail.

No Contact Condition of Release Case Law – Notice to Defendant Required

In *Pilorge v. State*, the Fifth 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.⁴ 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.⁵ 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.⁶

The *Pilorge* court found that 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.⁷ 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.⁸

In 2008, the Fifth District Court of Appeal again held that the state had the burden to prove the defendant received adequate notice of his pretrial no contact condition. In *Sheppard v. State*, the court stated “the state has the burden of proving, by substantial, competent evidence, that the condition was imposed on a defendant charged with domestic violence.”⁹ The court went on to quote its decision in *Pilorge* to state there is no presumption that the defendant knows that he or she is to have no contact.¹⁰

Thus, to be convicted of violating a no contact order by a person arrested for domestic violence, the state must prove by substantial competent evidence the defendant received constructive notice of the no contact condition laid out in s. 903.047, F.S. It may not be presumed the defendant is on notice of the no contact condition.

Effect of Bill

This bill amends current law to provide that courts are authorized, but not required, to issue an order of no contact to a person on pretrial release. Further, the bill clarifies that the order of no contact must be provided in writing, specifying the applicable prohibited acts, before the defendant is released from custody on pretrial release.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁴ 876 So. 2d 591 (Fla. 5th DCA 2004).

⁵ *Id.* at 591.

⁶ *Id.* at 592.

⁷ *Id.*

⁸ *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.”).

⁹ *Sheppard v. State*, 974 So. 2d 529, 530 (Fla. 5th DCA 2008).

¹⁰ *Id.* at 530.

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.