

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1153 Pretrial Release in Cases Involving Minor Victims

SPONSOR(S): Criminal Justice Subcommittee; La Rosa

TIED BILLS: IDEN./SIM. **BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|-----------------|---------|------------------------------------------|
| 1) Criminal Justice Subcommittee | 9 Y, 0 N, As CS | Painter | Sumner |
| 2) Judiciary Committee | | | |

SUMMARY ANALYSIS

Pretrial release allows a defendant to stay in the community while his or her criminal case is pending. The judge determines the conditions of a defendant's pretrial release at a first appearance hearing held within 24-hours of arrest. Pretrial release can include a bond, nonmonetary pretrial release conditions, or any combination thereof. However, there is a presumption in favor of nonmonetary conditions for any defendant who is granted pretrial release, so long as he or she does not pose a risk to the public and presence is assured at trial.

Currently, s. 903.047, F.S., requires as a condition of pretrial release, whether release is by bond or nonmonetary conditions, the defendant shall refrain from:

- Any criminal activity; and
- Contact of any type with the victim, except through pretrial discovery, if the court imposes a no contact order.

The defendant may file a motion to modify the court's order of no contact with the victim, and the court may modify that condition if good cause is shown and its in the interest of justice. The victim shall be permitted to be heard at any proceeding in which such modification is considered prior to the court's determination.

CS/HB 1153 amends s. 903.047, F.S., to add a third required condition of pretrial release. If the defendant is over the age of eighteen and arrested for a sexual offense involving a minor victim, then the defendant is prohibited from contact with any minor. The bill defines "no contact with a minor," to mean any communication with a minor, including through a third party, any alone time with a minor, or any direct physical contact with a minor. A defendant may file a motion with the court to modify the condition of no contact with a minor. The court may grant the motion only upon a showing of good cause and in the interest of justice.

CS/HB 1153 clarifies that it is only when the defendant is filing a motion to modify the no contact order with the victim that the victim has a right to be heard. This provision does not apply when the defendant is filing a motion to modify the no contact order with any minor.

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

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pretrial Release

The Florida Constitution creates a presumption in favor of release for a defendant charged with a crime and who is incarcerated pending resolution of the charge. Section 14, Article I, of the Florida Constitution provides, in part:

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...shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from physical harm..., assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Within 24 hours of arrest, a defendant must be taken before a judge for a first appearance hearing.¹ At the hearing, the judge determines the conditions of any pretrial release.² As forms of pretrial release, a judge may impose a bail bond³, nonmonetary pretrial release conditions⁴, or any combination thereof. A judge must presume that nonmonetary conditions are sufficient for any person granted pretrial release⁵ who is not charged with a dangerous crime.⁶

If a person is charged with a "dangerous crime" as defined in s. 907.041, F.S., the state may file a motion for pretrial detention, meaning the defendant will remain in jail pending the resolution of the criminal case.⁷ At a pretrial detention hearing, the state attorney has the burden of showing the need for pretrial detention beyond a reasonable doubt. Even where the state meets its burden of proving that a defendant has no constitutional right to pretrial release, the court may still exercise its discretion to grant pretrial release when the defendant proves that conditions of release can protect the public from risk of physical harm, assure his presence at trial, and assure the integrity of the judicial process.⁸

In determining whether to release a defendant on bail or other conditions, and what bail or those conditions may be, the court may consider:⁹

- The nature and circumstances of the offense charged and the penalty provided by law;

¹ Fla. R. Crim. P. 3.130.

² Id.

³ 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, commonly called a cash bond, 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 licensed. A criminal surety bail bond requires a defendant to pay the bail bond agent a nonrefundable fee equal to 10 percent of the bail bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond. See ss. 903.011, 903.105, 903.045, F.S.

⁴ 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.

⁵ S. 907.041(3)(a), F.S.

⁶ "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.

⁷ Fla. R. Crim. P. 3.132.

⁸ *Reeves v. Nocco*, 141 So. 3d 775 (Fla. 2d 2014).

⁹ Fla. Rule Crim. P. 3.131(3).

- The weight of the evidence;
- The defendant's family ties, length of residence in the community, employment history, financial resources, need for substance abuse evaluation and/or treatment, 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;
- The nature and probability of danger that 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 is on probation, parole, or other release pending completion of sentence; and
- Any other facts the court considers relevant.

In addition to any bond or special conditions imposed by the court, if the court grants pretrial release then the defendant must refrain from:¹⁰

- Any criminal activity; and
- Contact of any type with the victim, except through pretrial discovery, if the court imposes a no contact order.

If the court issues an order of no contact as part of pretrial release, then the defendant must refrain from contact of any type with the victim.¹¹ 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.¹² The defendant must be informed, in writing, of all the applicable prohibited acts of the no contact order before being released from custody.¹³ Upon defendant's motion, a court may modify a no contact order if good cause is shown and it is in the interest of justice.¹⁴ The victim has a right to be heard prior to any decision by the court to modify the no contact order.¹⁵

If a defendant violates the conditions of pretrial release, he or she may be arrested and returned to the court that has jurisdiction.¹⁶

Effect of the Proposed Changes

CS/HB 1153 amends s. 903.047, F.S., to require that, as a condition of pretrial release, a defendant over eighteen years old who is arrested for a sexual crime involving a minor may not have any contact with a minor. The bill defines no contact with a minor to prohibit:

- 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 a minor;
- Being alone with a minor; or
- Having any direct physical contact with a minor.

Currently, if the court imposes a no contact order then the statute requires no contact with any victims, which could include any minor victims. However, any condition of pretrial release beyond the existing no contact order, such as no contact with any minor, is left to the discretion of the court. The bill eliminates this discretion and makes it a requirement that a defendant arrested for a sexual act involving a minor refrain from any contact with a minor.

The bill also permits the court to, upon a motion by the defendant, modify the no contact with a minor condition if good cause is shown and it is in the interest of justice. Currently, when the defendant files a motion to modify a no contact order with the victim, the victim has a right to be heard at the proceeding.

¹⁰ S. 903.047, F.S.

¹¹ S. 903.047(1)(b), F.S.

¹² Id.

¹³ Id.

¹⁴ S. 903.047(2), F.S.

¹⁵ Id.

¹⁶ Fla. R. Crim. P. 3.131; *see also* ss. 903.0471 and 907.041 F.S.

The bill clarifies that the victim's right to be heard does not apply when the defendant is filing a motion to modify a no contact order with any minor.

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, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2018, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment replaced the phrase "not be alone with a minor," to "no contact with a minor," and narrowed this prohibition to defendants over the age of eighteen arrested for a sexual offense involving a minor victim. The amendment defined "no contact with a minor," to prohibit any communication with a minor, including through a third party, any alone time with a minor, or any direct physical contact with a minor. The amendment clarified that the victim has a right to be heard when a defendant files a motion to modify a no contact order with the victim, but this right does not apply when the defendant files a motion to modify a no contact order with a minor.

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