

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 534

INTRODUCER: Senator Brandes

SUBJECT: Pretrial Release

DATE: March 1, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Favorable</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 534 creates two new programs that provide more tools for courts to use in the determination of whether it is appropriate to release a defendant from custody pending trial and what conditions are necessary to ensure pretrial release compliance.

First, the bill creates s. 907.042, F.S., authorizing counties, through the concurrence of specified entities, to establish a supervised bond program (Bond Program). Any circuit that establishes a Bond Program must allow eligible defendants to be released on active electronic monitoring, continuous alcohol monitoring, or both pending trial. The Bond Program utilizes evidence-based methods to provide a more consistent and accurate assessment of a defendant's ability to successfully comply with specified pretrial release conditions. The bill specifies components of the Bond Program, which, in part, include to:

- Use the results of a validated pretrial risk assessment instrument that has been administered to the defendant for specified purposes.
- Assess the defendant's behavioral characteristics and needs that increase the likelihood of criminal activity and that are able to be addressed through the placement of services.
- Coordinate necessary services and supervision through the Bond Program to reduce the likelihood of criminal activity and to increase the likelihood of compliance with pretrial release conditions.
- Require the appropriate court to make a final determination regarding whether a defendant will be placed into the Bond Program and if release if appropriate, to impose an individualized release plan.

This Bond Program will provide pretrial release to certain defendants who may not otherwise be eligible for pretrial release on unsupervised nonmonetary conditions and who cannot afford to satisfy the bond imposed by the court.

Additionally, the bill creates s. 907.0421, F.S., authorizing each judicial circuit to enter an administrative order, in concurrence with specified entities, to administer a risk assessment instrument (RAI) in preparation for first appearance or within 72 hours after arrest for use in pretrial release determinations. The bill requires that the RAI results be used as supplemental factors for the court to consider when determining the appropriateness of first appearance pretrial release and in determining the conditions of release which are appropriate based on the predicted level of risk and failure of pretrial release conditions. The bill also requires the court to impose the least restrictive conditions necessary to reasonably ensure that the defendant will be present at subsequent hearings.

The bill requires any circuits that choose to establish a program created by s. 907.042, F.S., s. 907.0421, F.S., or both, to report specified data about the programs to the Office of Program Policy and Government Accountability (OPPAGA) and requires the OPPAGA to include such data in its annual report addressing pretrial release programs.

The bill requires the RAI used in either program to be independently validated by the Department of Corrections (DOC) and the bill provides necessary rulemaking authority to the DOC to ensure compliance with this provision.

The bill authorizes counties to implement a Bond Program, which allows an eligible defendant to be released on active supervision and some form of bond while awaiting trial. Additionally, the bill authorizes judicial circuits to utilize RAIs for pretrial determination decisions. To the extent that such programs are created and defendants that would otherwise remain in custody pending trial are released, local governments may experience reduced costs due to not paying the full daily county jail per diem for such inmates. Additionally, the DOC and the OPPAGA have reported that there is no fiscal impact from the bill. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

## **II. Present Situation:**

### **Pretrial Release Subsequent to an Arrest**

The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.<sup>1</sup> There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance.<sup>2</sup>

#### ***Bail and Surety Bond***

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.<sup>3</sup> Bail is a common monetary condition of pretrial release, governed by

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<sup>1</sup> Article I, s. 14, FLA CONST. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id.*

<sup>2</sup> See art. I, s. 14, Fla. Const.; See also ss. 903.046 and 907.041, F.S.

<sup>3</sup> Section 903.046(1), F.S.

ch. 903, F.S.<sup>4</sup> For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances.<sup>5</sup>

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond<sup>6</sup> executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to 10 percent of the 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.<sup>7</sup>

### ***Pretrial Release Conditions***

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;<sup>8</sup>
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- Comply with any other condition deemed reasonably necessary to assure required appearance, including a condition requiring the defendant to return to custody after specified hours.<sup>9</sup>

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond; however, a judge can require a defendant to post a bond and participate in the program.<sup>10</sup> Specifically, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.<sup>11</sup> These

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<sup>4</sup> "Bail," BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

<sup>5</sup> *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

<sup>6</sup> Sections 903.011 and 903.105, F.S.

<sup>7</sup> Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2017*, Report No. 18-06, at 2. (November 2018) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1806rpt.pdf> (last visited February 21, 2019)(hereinafter cited as "OPPAGA Pretrial Report").

<sup>8</sup> A defendant released on his or her own recognizance (ROR) is released without a monetary requirement and without any conditions of release or supervision of any type. Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

<sup>9</sup> Rule 3.131(b)(1), Fla. R. Crim. Pro.

<sup>10</sup> *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.

<sup>11</sup> See s. 907.041, F.S., for a list of enumerated felonies that are included in the definition of a dangerous crime.

programs supervise defendants with various methods, including electronic monitoring<sup>12</sup> or phone contact.<sup>13</sup>

### ***A Court's Determination of Pretrial Release***

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including factors such as:

- 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.
- The nature and probability of danger which the defendant's release poses to the community.<sup>14</sup>

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure, if applicable;<sup>15</sup> and
- Comply with all conditions of pretrial release.

### ***Standard Bond Schedule***

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors, and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge.<sup>16</sup> Even though a county may have an established standard

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<sup>12</sup> An electronic monitoring device (EM) is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed by the person. EM systems can be either "passive" or "active" and are typically operated through radio frequency or global positioning system (GPS) monitoring. Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October, 2014, available at [https://www.ojjdp.gov/mpg/litreviews/Home\\_Confinement\\_EM.pdf](https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf) (last visited February 21, 2019).

<sup>13</sup> See OPPAGA Pretrial Report, at 9.

<sup>14</sup> Section 903.046(2), F.S. See also Rule 3.131(b)(3), Fla. R. Crim. Pro.

<sup>15</sup> Section 903.047(1)(b), F.S., provides that in a case where the court imposes a no contact order, the defendant must be informed in writing of the order of no contact, including the specified prohibited acts, before the defendant is released from custody on pretrial release. Section 903.047(2), F.S., also provides that a no contact order may be modified by the court upon motion of the defendant.

<sup>16</sup> Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a \$5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. See Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order No. 2-49.8, IN RE: Uniform Bond Schedule*, available at <http://www.jud10.flcourts.org/sites/default/files/adminOrders/2-49.8.pdf>; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm> (last visited all sites February 20, 2019).

bond schedule, a judge has the discretion to impose a bond that is above or below such schedule if he or she deems it is necessary based upon the circumstances of the case.<sup>17</sup>

### ***Violation of Pretrial Release Conditions***

A defendant who does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven.<sup>18</sup> Under s. 903.0471, F.S., the court may revoke, on its own motion, pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.<sup>19</sup>

### ***Supervised Bond Programs in Florida***

There is a movement towards bail reform in the United States, with some circuits, including Pinellas County in Florida, implementing a new model for releasing defendants while awaiting trial. The new programs typically require the administration of a risk assessment instrument (RAI), which is then utilized to determine the release conditions for the defendant.

Pinellas County created a supervised bond program which has been operating since 2014.<sup>20</sup> Sheriff Gualtieri, the chief correctional officer for Pinellas County, testified in the Senate Criminal Justice Committee on January 8, 2018, that this program was created in an effort to reduce the jail population in Pinellas County and avoid the need to build a larger facility.<sup>21</sup> Sheriff Gualtieri reported that while the bond amounts imposed by the court were proper to ensure public safety and compliance the judges could not lower the bail while still ensuring public safety and compliance without more oversight. As a result, a number of defendants remained in custody for months unable to meet the bail amount imposed.<sup>22</sup>

Upon agreement from the judiciary and in partnership with the bail bond industry, the Pinellas County Sheriff's Office established the supervised bond program that requires active electronic monitoring, continuous alcohol monitoring,<sup>23</sup> or both.<sup>24</sup>

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<sup>17</sup> *Mehaffie v. Rutherford*, 143 So.3d 432, 434 (Fla. 1st DCA 2014). Section 903.286, F.S., authorizes the clerk of the court to withhold from the return of a cash bond posted on behalf of a criminal defendant sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent.

<sup>18</sup> See s. 903.26, F.S.

<sup>19</sup> This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

<sup>20</sup> Presentation by Sheriff Bob Gualtieri, Pinellas County Sheriff's Office, in the Senate Criminal Justice Committee, January 8, 2018 (hereinafter cited as "Committee Presentation"); See also Sheriff Bob Gualtieri, PowerPoint Presentation, *ROR and Supervised Bond Presentation* (on file with the Criminal Justice Committee)(hereinafter cited as "Supervised Bond PowerPoint").

<sup>21</sup> Sheriff Gualtieri testified that the Pinellas County jail was crowded in 2014 with approximately 70 percent of the inmates being pretrial detainees. Supervised Bond PowerPoint, p. 3.

<sup>22</sup> Supervised Bond PowerPoint, p. 2-4.

<sup>23</sup> Continuous Alcohol Monitoring systems are tamper-resistant automated alcohol-monitoring devices that use transdermal testing to measure the amount of alcohol in a person's body, known as transdermal alcohol content (TAC). When alcohol is consumed, ethanol migrates through the skin and is excreted through perspiration. See National Institute of Justice, *Secure Continuous Remote Alcohol Monitoring (SCRAM) Technology Evaluability Assessment*, available at <https://www.ncjrs.gov/pdffiles1/nij/secure-continuous-remote-alcohol.pdf> (last visited February 20, 2019).

<sup>24</sup> *Id.* at p. 4-5.

The Pinellas County Sheriff's Office averages approximately 200 people per day on active supervision through the supervised bond program.<sup>25</sup> Sheriff Gualtieri reported that of all the defendants that have been released on the supervised bond program, 99.5 percent have appeared for court hearings as required and 94.9 percent did not commit a new crime while in the program.<sup>26</sup> Of the total cases supervised on the Supervised Bond Program, 45 percent were felonies, 30 percent were misdemeanors, and 25 percent were for the offense of driving under the influence (both felonies and misdemeanors).<sup>27</sup> Sheriff Gualtieri reported that these programs have resulted in a savings of \$38.9 million annually.<sup>28</sup>

### ***Evidence-Based Risk Assessment Tools***

RAIs measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.<sup>29</sup> RAIs consist of a set of questions that guide face-to-face interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminals reoffending. The questioner typically supplements the interview with an official records check. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.<sup>30</sup>

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors<sup>31</sup> do not change, while dynamic risk factors<sup>32</sup> either can change on their own or change through an intervention. The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment.<sup>33</sup> The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of need. In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.<sup>34</sup>

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<sup>25</sup> Supervised Bond PowerPoint, p. 7.

<sup>26</sup> *Id.* at p. 9.

<sup>27</sup> *Id.* at p. 10.

<sup>28</sup> *Id.* at p. 16. This savings takes into account the cost it would require to house an additional 900 inmates per day with the current per diem rate and the cost to run the program.

<sup>29</sup> Congressional Research Service, *Risk and Needs Assessment in the Federal Prison System*, Nathan James, p. 3 (July 10, 2018), available at <https://fas.org/sgp/crs/misc/R44087.pdf> (last visited February 26, 2019)(hereinafter cited at CRS Report)

<sup>30</sup> *Id.* 2-4.

<sup>31</sup> Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision. CRS Report, Summary Page.

<sup>32</sup> Dynamic risk factors, also called "criminogenic needs," can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence. "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. *Id.*

<sup>33</sup> The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender. *Id.*

<sup>34</sup> *Id.*

### Use of Risk Assessment Instruments by the Department of Corrections

The Department of Corrections (DOC) has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.<sup>35</sup> Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.<sup>36</sup> Spectrum has been independently verified through the School of Criminology at the Florida State University.<sup>37</sup>

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.<sup>38</sup> Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains<sup>39</sup> and three core program areas.<sup>40</sup>

The DOC utilizes the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during the administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.<sup>41</sup> Spectrum was completed in September, 2016, and subsequently deployed throughout the state.<sup>42</sup>

## **III. Effect of Proposed Changes:**

### **Supervised Bond Program**

The bill creates s. 907.042, F.S., authorizing each county to create a supervised bond program (Bond Program). The terms of each county's Bond Program must be developed with the concurrence of the chief judge of the circuit, the sheriff, the state attorney (SA), and the public defender (PD). However, a county that has already established and implemented a Bond Program may continue to operate without such concurrence if the program complies with the specified program and RAI requirements discussed below.

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<sup>35</sup> DOC, Spectrum Video, available at <https://www.youtube.com/watch?v=F1sQsOE6BgM> (last visited February 26, 2019) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee)(hereinafter cited as "DOC Program Information").

<sup>36</sup> Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018)(on file with Senate Criminal Justice Committee).

<sup>37</sup> Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018)(on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

<sup>38</sup> DOC Program Information.

<sup>39</sup> The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video.

<sup>40</sup> The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018)(on file with the Senate Criminal Justice Committee).

<sup>41</sup> *Id.*

<sup>42</sup> See WFSU, *Florida Prison Officials Go Statewide With New Program To Better Help Rehabilitate Inmates*, Sarah Corder, September 23, 2016, available at <http://news.wfsu.org/post/florida-prison-officials-go-statewide-new-program-better-help-rehabilitate-inmates> (last visited February 26, 2019).

A Bond Program established pursuant to this bill must, at a minimum:

- Require the sheriff to administer the Bond Program.
- Use the results of a validated pretrial RAI that has been administered to the defendant for the purposes of pretrial release or supervision determinations.
- Assess the defendant's behavioral characteristics and needs that increase the likelihood of criminal activity and that are able to be addressed through the placement of services.
- Coordinate necessary services and supervision through the Bond Program to reduce the likelihood of criminal activity and to increase the likelihood of compliance with pretrial release conditions.
- Require the appropriate court to make a final determination regarding whether a defendant will be placed into the Bond Program. If such a determination is made, the court must also:
  - Determine the conditions of the individualized supervision plan with which the defendant must comply, including, but not limited to, the requirement that the defendant must:
    - Be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the risk assessment instrument; and
    - Communicate weekly, via telephone or in-person contact, as determined by the court, with the Sheriff's office.
  - Review the bond of a defendant who is being accepted into the Bond Program to determine if a reduction of the court-ordered bond, up to and including its entirety, is appropriate.
- Establish procedures for reassessing or terminating from the Bond Program defendants who do not comply with the terms of the individualized supervision plan imposed through the program.

Each county that establishes a Bond Program must use a RAI that is validated by the DOC. A RAI that is used for other pretrial release determinations in accordance with s. 907.0421, F.S., discussed below, and that has previously been validated by the DOC does not need to be validated for use in the Bond Program. Additionally, the bill provides that a Bond Program may continue to operate while the DOC validates the RAI used by such program if the Bond Program is in operation on October 1, 2019.

The bill requires each county that establishes a Bond Program under the bill, or that has an existing Bond Program that operates in compliance with the bill, to provide an annual report to the Office of Program Policy Analysis and Government Accountability (OPPAGA). The bill requires the reports beginning in 2020 and then by October 1 of each year thereafter. The reports must include:

- The results of the administration of the risk assessment instrument;
- The programming used for defendants who received the assessment and were accepted into the supervised bond program;
- The success rate of the program; and
- Any savings realized by the county as a result of such defendants being released from custody pending trial.



The bill also requires OPPAGA to compile the results of such county reports and include this data in an independent section of its annual pretrial release report developed and submitted to the President of the Senate and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.

Lastly, the bill provides legislative findings in support of the need for the creation of Bond Programs throughout the state, including the finding that:

- Using evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions provides a more consistent and accurate assessment of a defendant's risk of noncompliance.
- Both the community and a defendant are better served when a low-risk defendant is provided the opportunity to maintain employment and familial responsibilities in the community under a structured pretrial release plan that ensures the best chance of complying with all pretrial conditions.
- Providing pretrial release to certain defendants who may not otherwise be eligible for pretrial release on unsupervised nonmonetary conditions and who do not have the ability to satisfy the bond imposed by the court is beneficial.
- The creation of Bond Programs will reduce the likelihood that defendants will remain unnecessarily in custody pending trial.

### **Risk Assessment Instruments in Pretrial Decisions**

The bill also creates s. 907.0421, F.S., authorizing the chief judge of each judicial circuit, with the concurrence of the county's chief correctional officer, the SA, and the PD, to administer a RAI in preparation for first appearance or within 72 hours after arrest for use in pretrial release determinations. To utilize the provisions of the bill, the circuit must enter an administrative order to authorize the use of RAIs.

The bill further provides that the RAI must be objective, standardized, and based on analysis of empirical data and risk factors relevant to failure of pretrial release conditions. The bill further provides that the risk factors considered must be those that:

- Evaluate the likelihood of failure to appear in court and the likelihood of rearrest during the pretrial release period; and
- Have been validated through data based on the pretrial population.

For circuits that enter into an administrative order in accordance with s. 907.0421, F.S., the bill requires that the RAI results be used as supplemental factors for the court to consider when determining the appropriateness of first appearance pretrial release. Further, the RAI results must be used to determine the conditions of release which are appropriate based on predicted level of risk and failure of pretrial release conditions. The bill requires the court to impose the least restrictive conditions necessary to reasonably ensure that the defendant will be present at subsequent hearings.

The bill retains the court's sole discretion to impose any pretrial conditions.

The bill requires that the DOC independently validate any RAI used by a circuit in pretrial release determinations. A circuit may begin to use the specified RAI in pretrial release

determinations immediately after validation and implementation of training all local staff who will administer the RAI to defendants.

As is required of circuits that establish the above mentioned Bond Program, the bill requires each circuit that establishes an administrative order for the use of RAI in first appearance pretrial release determinations, beginning in 2020 and every October 1 thereafter, to provide an annual report to the OPPAGA which details:

- The risk assessment instrument used;
- The results of the administration of the risk assessment instrument, including the results of defendants who were detained in custody awaiting trial and those who were released from custody awaiting trial;
- The frequency at which released defendants failed to appear at one or more subsequent court hearings; and
- The level of risk determined in the risk assessment instrument associated with a defendant that failed to appear for any court hearings.

The OPPAGA must compile the results of such reports and include the data in an independent section of its annual report developed and submitted to the President of the Senate and the Speaker of the House of Representatives in accordance with s. 907.044, F.S.

The bill also provides findings to support the use of RAIs in considering pretrial release decisions, including the finding that:

- There is a need to use evidence-based methods to identify defendants who can successfully comply with specified pretrial release conditions.
- The use of actuarial instruments that classify offenders according to the likelihood of failure to appear at subsequent hearings or to engage in criminal conduct while awaiting trial provides a more consistent and accurate assessment of a defendant's risk of noncompliance while on pretrial release pending trial.
- Research indicates that using RAIs ensure successful compliance with pretrial release conditions imposed on a defendant and reduces the likelihood of a defendant remaining unnecessarily in custody pending trial.

The bill also provides rulemaking authority to the DOC to administer the relevant provisions of the bill.

The bill is effective October 1, 2019.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the DOC to validate the RAI used in both of the programs created in the bill. The DOC reports that the bill does not have a direct impact on the agency.<sup>43</sup> Additionally, the OPPAGA reports that the bill does not have an impact and the tasks assigned to the OPPAGA in the bill can be achieved within existing resources.<sup>44</sup>

**Supervised Bond Program**

Local governments may experience reduced costs as a result of the implementation of the Bond Program. A county may implement a supervised bond program, which allows an eligible defendant to be released on active supervision and some form of bond or ROR while awaiting trial. As a result, the county's costs to supervise the participants may be decreased from the full daily county jail per diem to the much lower per diem rates for active electronic monitoring or continuous alcohol monitoring technologies, or both.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>43</sup> The DOC, *SB 534 Agency Analysis*, January 31, 2019 (on file with the Senate Committee on Criminal Justice).

<sup>44</sup> The OPPAGA, *SB 534 Agency Analysis*, February 11, 2019 (on file with the Senate Committee on Criminal Justice).

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 907.042 and 907.0421.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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