

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 510

INTRODUCER: Senator Wright

SUBJECT: Bail Pending Appellate Review

DATE: December 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Favorable
2.	Ravelo	Cibula	JU	Pre-meeting
3.			RC	

I. Summary:

SB 510 prohibits a person from being released on bail when appealing a felony conviction for an offense requiring registration as a sexual offender or sexual predator where the offender was 18 years of age or older and the victim was a minor.

The bill is effective October 1, 2020.

II. Present Situation:

Bail includes any form of pretrial release, but frequently requires a monetary or cash component.¹ Bail on appeal may be set post-conviction if a defendant appeals the conviction. Bail is set by the court to ensure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.²

Bail on Appeal

Bail on appeal is a separate undertaking than the original bail issued pre-trial. If a defendant is convicted and the case is appealed, the court may issue bail on appeal, because bail issued at first appearance may not be continued for appeal. A new bail is considered to reflect the increased risk and longer time considerations.³ A defendant may be granted bail on appeal at the discretion of the trial court.⁴ However, defendants who are convicted of capital felony offenses are not

¹ Section 903.011, F.S.

² Section 903.046(1), F.S.

³ Section 903.132(3), F.S.

⁴ *Greene v. State*, 238 So. 2d 296, 298 (Fla. 1970).

eligible for bail on appeal.⁵ If a defendant is denied bail on appeal, he or she has a right to appeal the denial.⁶

Section 903.132, F.S., provides that a defendant may be granted bail on appeal from a conviction of a felony only if the defendant establishes that the appeal is in good faith, is fairly debatable, and not frivolous. However, a defendant may not receive bail on appeal if probable cause has been found for another pending felony, or if the defendant has a previous felony conviction, and:

- The commission of the previous conviction occurred before the crime that is the subject of the appeal; and
- The defendant's civil rights have not been restored.⁷

Section 903.133, F.S., prohibits bail on appeal for defendants convicted of specified crimes. Any defendant adjudicated guilty of a first degree felony of:

- Second degree murder or felony murder (s. 782.04(2) or (3), F.S.).
- Kidnapping (s. 787.01, F.S.).
- Sexual battery (s. 794.011(4), F.S.).
- Arson (s. 806.01, F.S.).
- Sale, manufacture, deliver or possess with intent to sell a controlled substance (s. 893.13, F.S.).
- Drug trafficking (s. 893.135, F.S.).

If a defendant commits and is convicted of a separate felony offense while free on bail on appeal, that bail must be revoked.⁸

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.⁹ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,¹⁰ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

⁵ *Rowe v. State*, 417 So. 2d 981, 983 (Fla. 1982) (holding that Fla. R. Crim. Pro. 3.961 prohibits the granting of bail on appeal for a defendant convicted of a capital offense and sentenced to life in prison).

⁶ Section 903.132(2), F.S.

⁷ Section 903.132(1), F.S.

⁸ Section 903.131, F.S.

⁹ Sections 775.21 and 943.0435, F.S.

¹⁰ Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;¹¹
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.¹²

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.¹³

Qualifying offenses for registration as a sexual offender, which subsumes all offenses required for registration as a sexual predator, include:

- Sexual misconduct with a person having a developmental disability (s. 393.135(2), F.S.);
- Sexual misconduct with a mental health patient by an employee (s. 394.4593(2), F.S.);
- Specified violations of kidnapping or falsely imprisoning a minor (s. 787.01 or s. 787.02, F.S.);¹⁴
- Luring or enticing a child, by a person with a prior sexual conviction (s. 787.025(2), F.S.);
- Human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.);
- Sexual battery (s. 794.011, excluding s. 794.011(10), F.S.);
- Unlawful sexual activity with a minor (s. 794.05, F.S.);
- Lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.);
- Video voyeurism, involving a minor victim (s. 810.145(8), F.S.);
- Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);
- Providing obscene materials to a minor (s. 847.0133, F.S.);
- Computer pornography involving a minor (s. 847.0135(2), F.S.);
- Soliciting a minor over the Internet (s. 847.0135(3), F.S.);
- Traveling to meet a minor (s. 847.0135(4), F.S.);
- Lewd or lascivious exhibition over the Internet (s. 847.0135(5), F.S.);
- Transmitting child pornography by electronic device or equipment (s. 847.0137, F.S.);

¹¹ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

¹² Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

¹³ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

¹⁴ However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor. *State v. Robinson*, 873 So. 2d 1205 (Fla. 2004).

- Transmitting material harmful to a minor by electronic device (s. 847.0138, F.S.);
- Selling or buying a minor to engage in sexually explicit conduct (s. 847.0145, F.S.);
- Racketeering involving a sexual offense (s. 895.03, F.S.);
- Sexual misconduct with a forensic client (s. 916.1075(2), F.S.); and
- Sexual misconduct by an employee with a juvenile offender (s. 985.701(1), F.S.).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.¹⁵ Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

The Florida Courts Rules of Procedure

Florida statutes, such as the Florida Evidence Code as enacted by the Legislature, contain both procedural and substantive law for the courts to apply. However, statutes that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.¹⁶ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under Article V, § 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for medical negligence expert witnesses on the grounds that the statute was procedural.¹⁷

Currently, post-conviction bail under the rules of procedure mirror that of the statutes.¹⁸ If bail is denied, the Judge must issue written findings with reasons for the denial. If the defendant is released pending an appeal, the conditions of the release must include that the defendant duly prosecute the case, and surrender themselves to the court upon the appeal being affirmed or modified.¹⁹ If the judgment is reversed and remanded for a new trial, the defendant must appear before the court and not flee the jurisdiction.

¹⁵ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us*, Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on Nov. 5, 2019). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Nov. 5, 2019).

¹⁶ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses' hearsay exception of the requirement that the witness be unavailable.

¹⁷ *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014).

¹⁸ Specifically, Fla. R. Crim. P. 3.691 says: "no person may be admitted to bail on appeal from a conviction of a felony unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. However, in no case shall bail be granted if such person has previously been convicted of a felony, the commission of which occurred prior to the commission of the subsequent felony, and the person's civil rights have not been restored or if other felony charges are pending against the person and probable cause has been found that the person has committed the felony or felonies at the time the request for bail is made."

¹⁹ When deciding post-conviction bail based on a good faith fairly debatable appeal, the courts must also consider: (1) the habits of the individual as to respect for the law, (2) his local attachments to the community, by way of family ties, business,

Sex Offense Convictions and Dispositions

The FDLE, as part of the Uniform Crime Report administered by the Federal Bureau of Investigations, publishes an annual list of crimes known to and suspected by law enforcement agencies. Although not inclusive of all crimes related to sexual offenders or predators, the 2018 report shows that there were 2,562²⁰ arrests based on forcible²¹ sex offenses and 2,238 arrests based on non-forcible²² sex offenses that were documented by law enforcement agencies.

The Office of the State Courts Administrator tracks the number of convictions, pleas, and dismissals throughout the state trial courts. For the 2017-2018 fiscal year, 2,562 cases were filed based on sexual offenses in circuit²³ criminal courts.²⁴ That same fiscal year, there were 1,796 dispositions²⁵ based on sexual offenses, with 1,166 resolving through pleas, 196 being convicted post trial, and the remainder either resolving through dismissal, acquittal, transfer, or some another alternative to prosecution. In that same fiscal year, the Florida Department of Corrections reported that 1,549 individuals were admitted to a state prison based on a sexual offense, having an average sentence of 12 years.²⁶ Each of these agencies use a different methodology for their reported statistics, and thus, it is expected that the statistics are comparable as opposed to identical.²⁷

or investments, (3) the severity of the punishment imposed for the offense, and any other circumstances relevant to the question of whether the person would be tempted to remove himself from the jurisdiction of the court. In a case where the term of imprisonment imposed is short, the trial court might also consider whether the denial of bail would render nugatory the right to appeal from the judgment of conviction. *Youngmans v. State*, 90 So. 2d 308, 310 (Fla. 1956).

²⁰ Despite the total arrest number for forcible sex offenses being 2,562, there were a total of 11,907 forcible sex offenses reported to law enforcement agencies.

²¹ Forcible Sex Offenses for the purpose of the FDLE Uniform Crime Report include any sexual act directed against another person, forcibly and/or against that person's will or not forcibly or against the person's will where the victim is incapable of giving consent. Generally, this may include: rape, attempted rape, sodomy, fondling, child molestation, lewd or lascivious molestation, and lewd or lascivious conduct.

²² Non-Forcible Sex Offenses for the purpose of the FDLE Uniform Crime Report include unlawful sexual intercourse, sexual contact, or the unlawful behavior or conduct intended to result in sexual gratification without force or threat of force and where the victim is incapable of giving consent. Generally, this may include: incest, indecent exposure, obscenity, obscene communications and telephone calls, and obscene material or photography.

²³ Circuit criminal courts primarily receive cases that stem from a felony arrest or charge. Misdemeanors that are unrelated to a felony case are generally heard in the County Court division.

²⁴ Office of the States Courts Administrator, Circuit Criminal Overview FY 2017-18, <https://www.flcourts.org/content/download/430404/4673767/Chapter-3-Circuit-Criminal-FY-2017-18.pdf>.

²⁵ Dispositions generally mean the conclusion and final court order of a case. Importantly, dispositions could take several months or years to occur depending on the complexity of the case and the judge's docket. Thus, disposition numbers likely include cases based on incidents that occurred in previous years.

²⁶ Florida Dept. of Corrections, 2017-18 Annual Report, http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf.

²⁷ The FDLE, State Courts Administrator, and Florida Department of Corrections each use a different methodology for their statistics. For one, the State Courts Administrator includes sexual misconduct of by corrections officers under s. 944.35, F.S., sexual misconduct by psychotherapists, sexual battery by multiple perpetrators under s. 794.023, F.S., bigamy and incest under chapter 826, F.S. The Department of Corrections does not provide data based on statutory citations, and instead counts capital sexual battery, life sexual battery, first degree sexual battery, second degree sexual battery, sexual assault, and lewd and lascivious behavior towards the number of sexual offense based admissions. Likewise, FDLE counts each arrest as a single incident and only the primary incident is reported toward the Uniform Crime Report. If a capital murder case also involved a sexual assault, for example, the FDLE would count the capital murder towards statistics on murder and not on sexual assault.

Effect of Proposed Changes:

The bill amends s. 903.133, F.S., to add to the list of criminal convictions that make a person ineligible for release on bail during an appeal of the conviction. As amended, the statute prohibits a person from being granted bail on appeal for any offense requiring sexual offender registration under s. 943.0435(1)(h), F.S., or sexual predator registration under s. 775.21(4), F.S., when the offender is over 18 years of age and the victim is a minor.

This bill is effective October 1, 2020.

III. 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.

IV. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections may see a positive indeterminate prison bed impact due to defendants' ineligibility to receive bail on appeal.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends section 903.133 of the Florida Statutes.

VIII. 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.

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