

By Senator Book

32-00234-21

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1                                   A bill to be entitled  
 2       An act relating to pretrial detention; amending s.  
 3       907.041, F.S.; providing legislative findings;  
 4       requiring a court to order pretrial detention of a  
 5       person charged with a dangerous crime if the court  
 6       makes specified findings; providing an effective date.

8   Be It Enacted by the Legislature of the State of Florida:

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 10       Section 1. Subsection (4) of section 907.041, Florida  
 11   Statutes, is amended to read:

12       907.041 Pretrial detention and release.—

13       (4) PRETRIAL DETENTION.—

14       (a) As used in this subsection, "dangerous crime" means any  
 15   of the following:

- 16       1. Arson;
- 17       2. Aggravated assault;
- 18       3. Aggravated battery;
- 19       4. Illegal use of explosives;
- 20       5. Child abuse or aggravated child abuse;
- 21       6. Abuse of an elderly person or disabled adult, or
- 22   aggravated abuse of an elderly person or disabled adult;
- 23       7. Aircraft piracy;
- 24       8. Kidnapping;
- 25       9. Homicide;
- 26       10. Manslaughter;
- 27       11. Sexual battery;
- 28       12. Robbery;
- 29       13. Carjacking;

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30 14. Lewd, lascivious, or indecent assault or act upon or in  
31 presence of a child under the age of 16 years;

32 15. Sexual activity with a child, who is 12 years of age or  
33 older but less than 18 years of age, by or at solicitation of  
34 person in familial or custodial authority;

35 16. Burglary of a dwelling;

36 17. Stalking and aggravated stalking;

37 18. Act of domestic violence as defined in s. 741.28;

38 19. Home invasion robbery;

39 20. Act of terrorism as defined in s. 775.30;

40 21. Manufacturing any substances in violation of chapter  
41 893;

42 22. Attempting or conspiring to commit any such crime; and

43 23. Human trafficking.

44 (b) No person charged with a dangerous crime shall be  
45 granted nonmonetary pretrial release at a first appearance  
46 hearing; however, the court shall retain the discretion to  
47 release an accused on electronic monitoring or on recognizance  
48 bond if the findings on the record of facts and circumstances  
49 warrant such a release.

50 (c) The court may order pretrial detention if it finds a  
51 substantial probability, based on a defendant's past and present  
52 patterns of behavior, the criteria in s. 903.046, and any other  
53 relevant facts, that any of the following circumstances exist:

54 1. The defendant has previously violated conditions of  
55 release and that no further conditions of release are reasonably  
56 likely to assure the defendant's appearance at subsequent  
57 proceedings;

58 2. The defendant, with the intent to obstruct the judicial

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59 process, has threatened, intimidated, or injured any victim,  
60 potential witness, juror, or judicial officer, or has attempted  
61 or conspired to do so, and that no condition of release will  
62 reasonably prevent the obstruction of the judicial process;

63 3. The defendant is charged with trafficking in controlled  
64 substances as defined by s. 893.135, that there is a substantial  
65 probability that the defendant has committed the offense, and  
66 that no conditions of release will reasonably assure the  
67 defendant's appearance at subsequent criminal proceedings;

68 4. The defendant is charged with DUI manslaughter, as  
69 defined by s. 316.193, and that there is a substantial  
70 probability that the defendant committed the crime and that the  
71 defendant poses a threat of harm to the community; conditions  
72 that would support a finding by the court pursuant to this  
73 subparagraph that the defendant poses a threat of harm to the  
74 community include, but are not limited to, any of the following:

75 a. The defendant has previously been convicted of any crime  
76 under s. 316.193, or of any crime in any other state or  
77 territory of the United States that is substantially similar to  
78 any crime under s. 316.193;

79 b. The defendant was driving with a suspended driver  
80 license when the charged crime was committed; or

81 c. The defendant has previously been found guilty of, or  
82 has had adjudication of guilt withheld for, driving while the  
83 defendant's driver license was suspended or revoked in violation  
84 of s. 322.34;

85 5. The defendant poses the threat of harm to the community.  
86 The court may so conclude, if it finds that the defendant is  
87 presently charged with a dangerous crime, that there is a

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88 substantial probability that the defendant committed such crime,  
89 that the factual circumstances of the crime indicate a disregard  
90 for the safety of the community, and that there are no  
91 conditions of release reasonably sufficient to protect the  
92 community from the risk of physical harm to persons;

93 6. The defendant was on probation, parole, or other release  
94 pending completion of sentence or on pretrial release for a  
95 dangerous crime at the time the current offense was committed;

96 7. The defendant has violated one or more conditions of  
97 pretrial release or bond for the offense currently before the  
98 court and the violation, in the discretion of the court,  
99 supports a finding that no conditions of release can reasonably  
100 protect the community from risk of physical harm to persons or  
101 assure the presence of the accused at trial; or

102 8.a. The defendant has ever been sentenced pursuant to s.  
103 775.082(9) or s. 775.084 as a prison releasee reoffender,  
104 habitual violent felony offender, three-time violent felony  
105 offender, or violent career criminal, or the state attorney  
106 files a notice seeking that the defendant be sentenced pursuant  
107 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,  
108 habitual violent felony offender, three-time violent felony  
109 offender, or violent career criminal;

110 b. There is a substantial probability that the defendant  
111 committed the offense; and

112 c. There are no conditions of release that can reasonably  
113 protect the community from risk of physical harm or ensure the  
114 presence of the accused at trial.

115 (d) When a person charged with a crime for which pretrial  
116 detention could be ordered is arrested, the arresting agency

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117 shall promptly notify the state attorney of the arrest and shall  
118 provide the state attorney with such information as the  
119 arresting agency has obtained relative to:

120 1. The nature and circumstances of the offense charged;

121 2. The nature of any physical evidence seized and the  
122 contents of any statements obtained from the defendant or any  
123 witness;

124 3. The defendant's family ties, residence, employment,  
125 financial condition, and mental condition; and

126 4. The defendant's past conduct and present conduct,  
127 including any record of convictions, previous flight to avoid  
128 prosecution, or failure to appear at court proceedings.

129 (e) When a person charged with a crime for which pretrial  
130 detention could be ordered is arrested, the arresting agency may  
131 detain such defendant, prior to the filing by the state attorney  
132 of a motion seeking pretrial detention, for a period not to  
133 exceed 24 hours.

134 (f) The pretrial detention hearing shall be held within 5  
135 days of the filing by the state attorney of a complaint to seek  
136 pretrial detention. The defendant may request a continuance. No  
137 continuance shall be for longer than 5 days unless there are  
138 extenuating circumstances. The defendant may be detained pending  
139 the hearing. The state attorney shall be entitled to one  
140 continuance for good cause.

141 (g) The state attorney has the burden of showing the need  
142 for pretrial detention.

143 (h) The defendant is entitled to be represented by counsel,  
144 to present witnesses and evidence, and to cross-examine  
145 witnesses. The court may admit relevant evidence without

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146 complying with the rules of evidence, but evidence secured in  
147 violation of the United States Constitution or the Constitution  
148 of the State of Florida shall not be admissible. No testimony by  
149 the defendant shall be admissible to prove guilt at any other  
150 judicial proceeding, but such testimony may be admitted in an  
151 action for perjury, based upon the defendant's statements made  
152 at the pretrial detention hearing, or for impeachment.

153 (i) The pretrial detention order of the court shall be  
154 based solely upon evidence produced at the hearing and shall  
155 contain findings of fact and conclusions of law to support it.  
156 The order shall be made either in writing or orally on the  
157 record. The court shall render its findings within 24 hours of  
158 the pretrial detention hearing.

159 (j) A defendant convicted at trial following the issuance  
160 of a pretrial detention order shall have credited to his or her  
161 sentence, if imprisonment is imposed, the time the defendant was  
162 held under the order, pursuant to s. 921.161.

163 (k) The defendant shall be entitled to dissolution of the  
164 pretrial detention order whenever the court finds that a  
165 subsequent event has eliminated the basis for detention.

166 (l) The Legislature finds that a person who manufactures  
167 any substances in violation of chapter 893 poses a threat of  
168 harm to the community and that the factual circumstances of such  
169 a crime indicate a disregard for the safety of the community.  
170 The court shall order pretrial detention if the court finds that  
171 there is a substantial probability that a defendant charged with  
172 manufacturing any substances in violation of chapter 893  
173 committed such a crime and if the court finds that there are no  
174 conditions of release reasonably sufficient to protect the

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175 community from the risk of physical harm to persons.

176 (m) The Legislature finds that a defendant charged with a  
177 dangerous crime who has been previously convicted of such a  
178 crime poses a threat of harm to the community and that the  
179 factual circumstances of such crimes indicate a disregard for  
180 the safety of the community. The court shall order pretrial  
181 detention if the court finds that there is a substantial  
182 probability that a defendant charged with a dangerous crime  
183 committed such a crime and if the court finds that there are no  
184 conditions of release reasonably sufficient to protect the  
185 community from the risk of physical harm to persons.

186 Section 2. This act shall take effect October 1, 2021.