

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 Criminal Justice

BILL: CS/SB 1182

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Breach of Bond Costs

DATE: February 7, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Arnold</u> | <u>Knudson</u> | <u>BI</u> | Fav/CS |
| 2. | <u>Siples</u> | <u>Jones</u> | <u>CJ</u> | Favorable |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1182 requires that a bail bond agent pay to return an incarcerated defendant to the county in which the defendant was released on bail, rather than any county within the same judicial circuit, in order to be released of liability on a criminal surety bail bond.

The bill also requires a bail bond agent to pay the costs and expenses of returning the defendant to the original court's jurisdiction, while the defendant is under the bail bond's fiduciary, rather than just the cost of transportation.

The bill specifies costs and expenses may not exceed the prorated salary of the officers or the contracted transportation company involved in transporting the defendant. The bill limits transportation expenses to mileage, vehicle expenses, meals, and, when necessary, overnight lodging for the officer or contracted transportation company and the defendant.

The bill may have a fiscal impact on both the private and government sectors. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Pretrial Release

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release with reasonable conditions. A judge is required to presume that nonmonetary conditions¹ are sufficient for any person to be granted pretrial release who is not charged with a dangerous crime.² Although a court has the authority to impose any number of pretrial release conditions, it must impose conditions of release that require the defendant to refrain from criminal activity and to refrain from contact with the victim.³ If a defendant violates the pretrial release conditions, he or she may be arrested and held to answer before the court having jurisdiction to try the defendant.⁴

Bail Bonds

The purpose of a bail determination in criminal proceedings is to ensure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.⁵

Issuance of a Bail Bond

Bail is a common monetary condition of pretrial release that requires an arrestee to pay a set sum of money to the court to be released from jail.⁶ 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 under ch. 648, F.S.⁷ Generally, to use the services of a bail bond agent, the defendant or someone on the defendant's behalf must pay a nonrefundable fee to the bail bond agent equal to 10 percent of the bond amount set by the court.⁸ This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances.⁹

¹ 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.*

² Pursuant to s. 907.041(3), F.S., the term "dangerous crimes" includes: 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 ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking.

³ Section 903.047, F.S.

⁴ Section. 903.0471.

⁵ Section 903.046(1), F.S.

⁶ Section 903.011, F.S.

⁷ Section 903.105, F.S.

⁸ *Id.* *See also* Florida Dept. of Financial Services, *Bail Bonds Overview*, available at <https://www.myfloridacfo.com/division/consumers/understandingcoverage/bailbondsoverview.htm> (last visited February 1, 2022).

⁹ Section 903.045, F.S.

Breach and Forfeiture of a Bail Bond

If a defendant fails to appear in court or violates any pretrial release conditions, he or she breaches the bond and a court generally must declare the bond and any money deposited to be forfeited.¹⁰ However, this forfeiture requirement does not apply, even if there is a breach of the bond, when the information, indictment, or affidavit in the criminal case was not filed within six months of arrest, or the clerk of the court failed to provide the agent with at least 72 hours' notice of the time and date of the required appearance for the defendant.¹¹ Within five days after forfeiture of a bond, the court must mail or electronically transmit a notice to the bail bond agent and the surety company.¹² The value of the forfeited bond must be paid by the bail bond agent within 60 days of the date the notice was mailed or transmitted.¹³

Exoneration of Liability

A bail bond agent is exonerated of any further liability on a bail bond if, prior to a breach of the bond, the bail bond agent agrees in writing to pay the transportation cost of returning a defendant who is incarcerated in another county jail or prison to the jurisdiction of the court.¹⁴ Surrendering a defendant prior to a breach of the bond eliminates the need for a bail bond agent to go through the bond forfeiture and discharge process, and absolves the bail bond agent of future liability on the bond.¹⁵

The term "transportation cost" is not defined in statute. However, the Second District Court of Appeal has interpreted the term to apply only to the costs incurred by the sheriff's office in actually transporting the defendant from the county of arrest to the county holding the arrest warrant.¹⁶ This includes the prorated salary of the officers involved in transporting the defendant and the actual expenses of transportation.¹⁷

The "jurisdiction" to which the bail bond agent must return the defendant under s. 903.21(3), F.S., is any county within the judicial circuit of the court which issued the bond.¹⁸ This means a bail bond agent is only required to pay the cost to return a defendant to the closest county from where the defendant is incarcerated which lies within the same judicial circuit as the court that

¹⁰ Section 903.26(2)(a), F.S.

¹¹ Section 903.26(1), F.S. The 72 hours' notice period excludes Saturdays, Sundays, and holidays.

¹² Section 903.26(2)(a), F.S.

¹³ *Id.*

¹⁴ Section 903.21(3), F.S.

¹⁵ Section 903.21(1) and (2), F.S.

¹⁶ *Easy Bail Bonds v. Polk County*, 784 So. 2d 1173, 1177 (Fla. 2d DCA 2001).

¹⁷ *Id.* In a footnote, the court states that it cannot envision all the expenses that a sheriff's office may incur, it notes that "these costs would include vehicle expenses, meals, and when necessary, overnight lodging for the transporting deputy and prisoner." The court further provides that the county may also claim as costs the prorated salary paid to any deputy who must cover the assignment of the deputy who had to leave the county to pick up the defendant. The court leaves unanswered whether the county can claim as costs the prorated salary of the law enforcement officer who appears at a hearing to justify the amount of the costs sought by the county.

¹⁸ Section 903.21(3), F.S.

issued the bond.¹⁹ Consequently, the county sheriff often bears the cost of transporting the defendant the remaining distance to the actual county which issued the bond.²⁰

For example, to be exonerated from liability on the bond, if a defendant is released on bail in Franklin County (Apalachicola) and is subsequently arrested and detained in Duval County (Jacksonville), the bail bond agent is only required to pay transportation costs to return the defendant to Jefferson County (Monticello), the nearest county to Jacksonville that is in the same judicial circuit as Franklin County. The Franklin County Sheriff's Office is then responsible for the costs associated with transporting the defendant the remaining 103 miles from Jefferson County to Franklin County.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 903.21, F.S., related to method of surrendering a defendant and the exoneration of a bail bond agent of liability on a bond, by revising the definition of "jurisdiction" to mean the county from which the defendant was released on bail, rather than any county in the same judicial circuit.

The bill also requires a bail bond agent to pay the costs and expenses incurred in returning the defendant to the county in which he or she was released on bail, in order to be exonerated from liability on a bond. Costs and expenses may not exceed the prorated salary of the officers or the contracted transportation company involved and the actual expenses incurred in transporting the defendant. Transportation expenses are limited to mileage, vehicle expenses, meals, and, when

¹⁹ Section 26.021, F.S., provides Florida's circuit courts are divided into 20 judicial circuits as follows:

- First Circuit - Escambia, Okaloosa, Santa Rosa, and Walton Counties.
- Second Circuit - Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla Counties.
- Third Circuit - Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.
- Fourth Circuit - Clay, Duval, and Nassau Counties.
- Fifth Circuit - Citrus, Hernando, Lake, Marion, and Sumter Counties.
- Sixth Circuit - Pasco and Pinellas Counties.
- Seventh Circuit - Flagler, Putnam, St. Johns, and Volusia Counties.
- Eighth Circuit - Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties.
- Ninth Circuit - Orange and Osceola Counties.
- Tenth Circuit - Hardee, Highlands, and Polk Counties.
- Eleventh Circuit - Miami-Dade County.
- Twelfth Circuit - DeSoto, Manatee, and Sarasota Counties.
- Thirteenth Circuit - Hillsborough County.
- Fourteenth Circuit - Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties.
- Fifteenth Circuit - Palm Beach County.
- Sixteenth Circuit - Monroe County.
- Seventeenth Circuit - Broward County.
- Eighteenth Circuit - Brevard and Seminole Counties.
- Nineteenth Circuit - Indian River, Martin, Okeechobee, and St. Lucie Counties.
- Twentieth Circuit - Charlotte, Collier, Glades, Hendry, and Lee Counties.

²⁰ Florida Office of the State Courts Administrator, *HB 381 Bill Analysis*, November 9, 2021 (on file with the Senate Committee on Banking and Insurance).

²¹ Florida Department of Transportation, *FDOT Official Highway Mileage Viewer*, available at <https://fdotewp1.dot.state.fl.us/citytocitymileage/viewer.aspx> (last visited Feb. 2, 2022). Apalachicola was used as the starting location and Monticello was entered as the destination.

necessary, overnight lodging for the officer or contracted transportation company and the defendant. The bill provides that the bail bond agent is only responsible for the costs and expenses incurred for the transport of a defendant to whom he or she has a fiduciary duty.

Section 2 provides an effective date of July 1, 2022.

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:

Indeterminate. The bill may require a bail bond agent to transport a defendant a greater distance, thereby shifting the cost of transporting a defendant from the sheriff to the bail bond agent. Additionally, the bill may increase costs and expenses incurred by a bail bond agent related to meals, vehicle expenses, and overnight lodging for officers or contracted transportation companies involved in the transportation of a defendant.

C. Government Sector Impact:

Indeterminate. The bill may result in fewer hearings related to bond issues.²² The bill may also reduce expenditures incurred by sheriffs for transporting a defendant from a county within a judicial circuit to the county from which a defendant was released on bail.

²² Florida Office of the State Courts Administrator, *HB 381 Bill Analysis*, November 9, 2021 (on file with the Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 903.21 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 25, 2022:

The committee substitute:

- Specifies the types of costs and expenses the bail bond agent agrees to pay in the course of transporting the defendant, to be:
 - Not more than the prorated salary of the officers or the contracted transportation company involved;
 - Mileage;
 - Vehicle expenses;
 - Meals;
 - Overnight lodging for the officer or contracted transportation company and the defendant, when necessary.
- Specifies the bail bond agent is responsible only for costs and expenses incurred during the transport of the defendant while the defendant is under the bail bond's fiduciary.

- B. **Amendments:**

None.