

By Senator Rouson

19-01100A-22

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1 A bill to be entitled
2 An act relating to conditions of pretrial release;
3 amending s. 901.15, F.S.; providing an exception to
4 warrantless arrest; creating s. 901.1502, F.S.;
5 requiring an officer to issue a notice to appear
6 rather than make a custodial arrest in certain
7 circumstances; requiring persons receiving such
8 notices to appear to be scheduled for a court
9 appearance within a specified time period; amending s.
10 903.046, F.S.; specifying that criminal defendants who
11 are not charged with felony offenses are presumed to
12 be entitled to release without monetary bail or bail
13 with a monetary component to the conditions of their
14 release; requiring that such defendants be released
15 within a specified time period; providing requirements
16 before a court may set or modify a condition of
17 pretrial release that includes monetary bail or bail
18 with a monetary component; providing requirements for
19 monetary bail or bail with a monetary component;
20 amending s. 903.047, F.S.; requiring that all pretrial
21 releasees be enrolled in a specified notification
22 system; amending s. 903.0471, F.S.; requiring a court
23 to issue an arrest order if the court finds there is
24 probable cause to believe that a defendant on pretrial
25 release committed a specified offense; amending s.
26 907.041, F.S.; conforming provisions to changes made
27 by the act; revising the factors to be considered in
28 determining whether a defendant charged with DUI
29 manslaughter poses a threat of harm to the community

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30 for purposes of considering pretrial detention;
31 providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Subsection (1) of section 901.15, Florida
36 Statutes, is amended to read:

37 901.15 When arrest by officer without warrant is lawful.—A
38 law enforcement officer may arrest a person without a warrant
39 when:

40 (1) Except as provided in s. 901.1502, the person has
41 committed a felony or misdemeanor or violated a municipal or
42 county ordinance in the presence of the officer. An arrest for
43 the commission of a misdemeanor or the violation of a municipal
44 or county ordinance shall be made immediately or in fresh
45 pursuit.

46 Section 2. Section 901.1502, Florida Statutes, is created
47 to read:

48 901.1502 Notice to appear in lieu of arrest for certain
49 violations.—

50 (1) A law enforcement officer shall issue a notice to
51 appear in lieu of making a custodial arrest to a person accused
52 of a traffic violation or a nonviolent second degree misdemeanor
53 offense if the person:

54 (a) Verifies his or her identity;

55 (b) Poses no obvious threat to the community or any person;

56 and

57 (c) Has no obvious physical or mental health issues that
58 pose a risk to his or her own safety.

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59 (2) A person who receives a notice to appear under this
60 section shall be scheduled to appear in court within 21 days
61 after the date the notice is issued.

62 Section 3. Section 903.046, Florida Statutes, is amended to
63 read:

64 903.046 Purpose of and criteria for bail determination.—

65 (1) The purpose of a bail determination in criminal
66 proceedings is to ensure the appearance of the criminal
67 defendant at subsequent proceedings and to protect the community
68 against unreasonable danger from the criminal defendant. A
69 criminal defendant who is not charged with a felony offense is
70 presumed to be entitled to release without monetary bail or bail
71 with a monetary component to the conditions of his or her
72 release.

73 (2) When determining whether to release a defendant on bail
74 or other conditions, and what that bail or those conditions may
75 be, the court shall consider:

76 (a) The nature and circumstances of the offense charged.

77 (b) The weight of the evidence against the defendant.

78 (c) The defendant's family ties, length of residence in the
79 community, employment history, financial resources, and mental
80 condition.

81 (d) The defendant's past and present conduct, including any
82 record of convictions, previous flight to avoid prosecution, or
83 failure to appear at court proceedings. However, any defendant
84 who had failed to appear on the day of any required court
85 proceeding in the case at issue, but who had later voluntarily
86 appeared or surrendered, shall not be eligible for a
87 recognizance bond; and any defendant who failed to appear on the

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88 day of any required court proceeding in the case at issue and
89 who was later arrested shall not be eligible for a recognizance
90 bond or for any form of bond which does not require a monetary
91 undertaking or commitment equal to or greater than \$2,000 or
92 twice the value of the monetary commitment or undertaking of the
93 original bond, whichever is greater. Notwithstanding anything in
94 this section, the court has discretion in determining conditions
95 of release if the defendant proves circumstances beyond his or
96 her control for the failure to appear. This section may not be
97 construed as imposing additional duties or obligations on a
98 governmental entity related to monetary bonds.

99 (e) The nature and probability of danger which the
100 defendant's release poses to the community.

101 (f) The source of funds used to post bail or procure an
102 appearance bond, particularly whether the proffered funds, real
103 property, property, or any proposed collateral or bond premium
104 may be linked to or derived from the crime alleged to have been
105 committed or from any other criminal or illicit activities. The
106 burden of establishing the noninvolvement in or nonderivation
107 from criminal or other illicit activity of such proffered funds,
108 real property, property, or any proposed collateral or bond
109 premium falls upon the defendant or other person proffering them
110 to obtain the defendant's release.

111 (g) Whether the defendant is already on release pending
112 resolution of another criminal proceeding or on probation,
113 parole, or other release pending completion of a sentence.

114 (h) The street value of any drug or controlled substance
115 connected to or involved in the criminal charge. It is the
116 finding and intent of the Legislature that crimes involving

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117 drugs and other controlled substances are of serious social
118 concern, that the flight of defendants to avoid prosecution is
119 of similar serious social concern, and that frequently such
120 defendants are able to post monetary bail using the proceeds of
121 their unlawful enterprises to defeat the social utility of
122 pretrial bail. Therefore, the courts should carefully consider
123 the utility and necessity of substantial bail in relation to the
124 street value of the drugs or controlled substances involved.

125 (i) The nature and probability of intimidation and danger
126 to victims.

127 (j) Whether there is probable cause to believe that the
128 defendant committed a new crime while on pretrial release.

129 (k) Any other facts that the court considers relevant.

130 (l) Whether the crime charged is a violation of chapter 874
131 or alleged to be subject to enhanced punishment under chapter
132 874 or reclassification under s. 843.22. If any such violation
133 is charged against a defendant or if the defendant is charged
134 with a crime that is alleged to be subject to such enhancement
135 or reclassification, he or she is not eligible for release on
136 bail or surety bond until the first appearance on the case in
137 order to ensure the full participation of the prosecutor and the
138 protection of the public.

139 (m) Whether the defendant, other than a defendant whose
140 only criminal charge is a misdemeanor offense under chapter 316,
141 is required to register as a sexual offender under s. 943.0435
142 or a sexual predator under s. 775.21; and, if so, he or she is
143 not eligible for release on bail or surety bond until the first
144 appearance on the case in order to ensure the full participation
145 of the prosecutor and the protection of the public.

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146 (3) A defendant who has not been charged with a felony
147 offense shall be released without monetary bail or bail with a
148 monetary component to the conditions of his or her release if he
149 or she is otherwise entitled to pretrial release under
150 subsection (2). Such defendant shall be released within 48 hours
151 after his or her arrest.

152 (4) (a) Before setting or modifying a condition of pretrial
153 release that includes monetary bail or bail with a monetary
154 component, the court shall conduct an inquiry into the
155 defendant's ability to post monetary bail or bail with a
156 monetary component. Such inquiry shall allow the prosecutor,
157 defense counsel, and defendant the opportunity to provide the
158 court with information pertinent to the defendant's ability to
159 post monetary bail or bail with a monetary component. Such
160 information may be provided by proffer and may include
161 statements by the defendant's relatives or other persons who are
162 present at the hearing and have information about the
163 defendant's ability to post monetary bail or bail with a
164 monetary component. All information shall be admissible if it is
165 relevant and reliable, regardless of whether it would be
166 admissible under the rules of evidence applicable at a criminal
167 trial.

168 (b) When the court determines that monetary bail is a
169 necessary condition of pretrial release, the court shall make
170 the following findings and state, together with sufficient
171 supporting facts, on the record in open court, that:

172 1. No other conditions of pretrial release, without
173 monetary bail, will reasonably ensure the defendant's appearance
174 in court.

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175 2. The amount of monetary bail is not oppressive and is
176 considerate of the defendant's financial resources, and the
177 defendant has the present ability to post the amount necessary
178 to secure his or her pretrial release on bail.

179 3. The defendant will comply with the other conditions of
180 pretrial release.

181 (5) When setting bail, there shall be a presumption that
182 any conditions of pretrial release imposed shall be nonmonetary
183 in nature, and the court shall impose the least restrictive
184 conditions or combination of conditions necessary to reasonably
185 ensure the defendant's appearance in court. Such conditions or
186 combination of conditions shall include conditions necessary to
187 ensure that the defendant does not pose a real and present
188 threat to the physical safety of any person. The court shall
189 consider the defendant's social and economic circumstances when
190 setting conditions of pretrial release. The court shall require
191 another hearing if a defendant remains in jail 48 hours after
192 being offered pretrial release on monetary bail.

193 Section 4. Subsection (2) of section 903.047, Florida
194 Statutes, is amended to read:

195 903.047 Conditions of pretrial release.—

196 (2) Upon motion by the defendant when bail is set, or upon
197 later motion properly noticed pursuant to law, the court may
198 modify the condition required by paragraph (1) (b) if good cause
199 is shown and the interests of justice so require. The victim
200 shall be permitted to be heard at any proceeding in which such
201 modification is considered, and the state attorney shall notify
202 the victim of the provisions of this subsection and of the
203 pendency of any such proceeding. Each defendant released shall

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204 be enrolled in e-Notify, the state's court event notification
205 system, to receive notification of upcoming court events.

206 Section 5. Section 903.0471, Florida Statutes, is amended
207 to read:

208 903.0471 Violation of condition of pretrial release.—
209 Notwithstanding s. 907.041, a court may, on its own motion,
210 revoke pretrial release and order pretrial detention if the
211 court finds probable cause to believe that the defendant
212 committed a new crime while on pretrial release. The court shall
213 issue an arrest order if it finds there is probable cause to
214 believe that the defendant on pretrial release committed an
215 offense listed in s. 775.084(1)(b)1.

216 Section 6. Subsection (1) and paragraphs (a), (b), and (c)
217 of subsection (4) of section 907.041, Florida Statutes, are
218 amended to read:

219 907.041 Pretrial detention and release.—

220 (1) LEGISLATIVE INTENT.—It is the policy of this state that
221 persons committing serious felony ~~criminal~~ offenses, posing a
222 threat to the safety of the community or the integrity of the
223 judicial process, or failing to appear at trial be detained upon
224 arrest. However, persons found to meet specified criteria shall
225 be released under certain conditions until proceedings are
226 concluded and adjudication has been determined. The Legislature
227 finds that this policy of pretrial detention and release will
228 assure the detention of those persons posing a threat to society
229 while reducing the costs for incarceration by releasing, until
230 trial, those persons not considered a danger to the community
231 who meet certain criteria. It is the intent of the Legislature
232 that the primary consideration be the protection of the

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233 community from risk of physical harm to persons.

234 (4) PRETRIAL DETENTION.—

235 (a) As used in this subsection, "dangerous crime" means a
236 felony violation of any of the following:

237 1. Arson;

238 2. Aggravated assault;

239 3. Aggravated battery;

240 4. Illegal use of explosives;

241 5. Child abuse or aggravated child abuse;

242 6. Abuse of an elderly person or disabled adult, or
243 aggravated abuse of an elderly person or disabled adult;

244 7. Aircraft piracy;

245 8. Kidnapping;

246 9. Homicide;

247 10. Manslaughter;

248 11. Sexual battery;

249 12. Robbery;

250 13. Carjacking;

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

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

256 16. Burglary of a dwelling;

257 17. Stalking and aggravated stalking;

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

259 19. Home invasion robbery;

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

261 21. Manufacturing any substances in violation of chapter

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262 893;

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

264 23. Human trafficking.

265 (b) A ~~No~~ person charged with a dangerous crime may not266 ~~shall~~ be granted nonmonetary pretrial release at a first

267 appearance hearing; however, the court shall retain the

268 discretion to release an accused on electronic monitoring or on

269 recognizance bond if the findings on the record of facts and

270 circumstances warrant such a release.

271 (c) The court may only order pretrial detention if it finds

272 a substantial probability, based on a defendant's past and

273 present patterns of behavior, the criteria in s. 903.046, and

274 any other relevant facts, that any of the following

275 circumstances exist:

276 1. The defendant has previously violated conditions of
277 release and that no further conditions of release are reasonably
278 likely to assure the defendant's appearance at subsequent
279 proceedings;

280 2. The defendant, with the intent to obstruct the judicial
281 process, has threatened, intimidated, or injured any victim,
282 potential witness, juror, or judicial officer, or has attempted
283 or conspired to do so, and that no condition of release will
284 reasonably prevent the obstruction of the judicial process;

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

290 4. The defendant is charged with DUI manslaughter, as

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291 defined by s. 316.193, and that there is a substantial
292 probability that the defendant committed the crime and that the
293 defendant poses a threat of harm to the community; conditions
294 that would support a finding by the court pursuant to this
295 subparagraph that the defendant poses a threat of harm to the
296 community include, but are not limited to, any of the following:

297 a. The defendant has previously been convicted of any crime
298 under s. 316.193, or of any crime in any other state or
299 territory of the United States that is substantially similar to
300 any crime under s. 316.193;

301 ~~b. The defendant was driving with a suspended driver~~
302 ~~license when the charged crime was committed; or~~

303 b.e. The defendant has previously been found guilty of, or
304 has had adjudication of guilt withheld for, driving while the
305 defendant's driver license was suspended or revoked in violation
306 of s. 322.34;

307 5. The defendant poses the threat of harm to the community.
308 The court may so conclude, if it finds that the defendant is
309 presently charged with a dangerous crime, that there is a
310 substantial probability that the defendant committed such crime,
311 that the factual circumstances of the crime indicate a disregard
312 for the safety of the community, and that there are no
313 conditions of release reasonably sufficient to protect the
314 community from the risk of physical harm to persons;

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

318 7. The defendant has violated one or more conditions of
319 pretrial release or bond for the offense currently before the

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320 court and the violation, in the discretion of the court,
321 supports a finding that no conditions of release can reasonably
322 protect the community from risk of physical harm to persons or
323 assure the presence of the accused at trial; or

324 8.a. The defendant has ever been sentenced pursuant to s.
325 775.082(9) or s. 775.084 as a prison releasee reoffender,
326 habitual violent felony offender, three-time violent felony
327 offender, or violent career criminal, or the state attorney
328 files a notice seeking that the defendant be sentenced pursuant
329 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
330 habitual violent felony offender, three-time violent felony
331 offender, or violent career criminal;

332 b. There is a substantial probability that the defendant
333 committed the offense; and

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

337 Section 7. This act shall take effect July 1, 2022.