

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 381 Breach of Bond Costs

**SPONSOR(S):** Judiciary Committee, Criminal Justice & Public Safety Subcommittee, Maney

**TIED BILLS:** IDEN./SIM. BILLS: SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Padgett	Hall
2) Commerce Committee	18 Y, 0 N	Hinshelwood	Hamon
3) Judiciary Committee	20 Y, 0 N, As CS	Padgett	Kramer

### SUMMARY ANALYSIS

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. Bail requires an arrestee to pay a set sum of money to the court to be released from jail. As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent. To use the services of a bail bond agent, an incarcerated person must pay a nonrefundable fee to the bail bond agent equal to 10 percent of the bond amount set by the court. This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances. If a defendant fails to appear at a required court appearance, the bond is breached, and the court is required to issue an order forfeiting the bond posted by the bail bond agent.

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 to pay the transportation cost of returning a defendant who is incarcerated in another county jail or prison to the jurisdiction of the court. A bail bond agent who makes such an agreement prior to a breach of the bond can avoid the bond forfeiture and discharge process and is absolved from all future liability on the bail bond. 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. 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, 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 from Jefferson County to Franklin County.

CS/HB 381 amends the definition of "jurisdiction" in s. 903.21(3), F.S., to require a bail bond agent to transport an incarcerated defendant to the county from which the defendant was released on bail, rather than any county in the same judicial circuit, in order to be exonerated from liability on a bond prior to a breach. The bill also requires a bail bond agent to pay the costs and expenses incurred in returning a defendant to the court's jurisdiction, rather than just the cost of transportation. The bill defines "costs and expenses" as the prorated salary of any law enforcement officer or employee of a contracted transportation company as well as the actual expenses of transporting each defendant which may only consist of mileage, vehicle expenses, meals, and, if necessary, overnight lodging for any law enforcement officer or employee of a contracted transportation company and the defendant.

The bill provides a surety is only responsible for the itemized costs and expenses incurred for the transport of a defendant to whom he or she has a fiduciary duty and is not liable for the costs and expenses incurred in transporting any other defendant. Requiring a bail bond agent to transport a defendant to the county where he or she was released on bond shifts the cost of transporting a defendant from the sheriff to the bail bond agent who is profiting off the bond.

The bill may reduce expenditures incurred by sheriffs from transporting a defendant from a county within a judicial circuit to the county from which the defendant was released on bail.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### 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 on reasonable grounds. A judge is required to presume that nonmonetary conditions<sup>1</sup> are sufficient for any person to be granted pretrial release who is not charged with a dangerous crime.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

##### Bail Bonds

###### *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.<sup>5</sup> 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.<sup>6</sup> Generally, to use the services of a bail bond agent, an incarcerated person must pay a nonrefundable fee to the bail bond agent equal to 10 percent of the bond amount set by the court.<sup>7</sup> This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances.<sup>8</sup>

###### *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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> The value of the

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<sup>1</sup> 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.

<sup>2</sup> S. 907.041(3), F.S. "Dangerous crimes" include: 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 chapter 893; attempting or conspiring to commit any such crime; and human trafficking. s. 907.041, F.S.

<sup>3</sup> S. 903.047, F.S.

<sup>4</sup> Ss. 903.0471 and 907.041, F.S.

<sup>5</sup> S. 903.011, F.S.

<sup>6</sup> S. 903.105, F.S.

<sup>7</sup> *Id.* See also Florida Dept. of Financial Services, *Bail Bonds Overview*

<https://www.myfloridacfo.com/division/consumers/understandingcoverage/bailbondsoverview.htm> (last visited Jan. 26, 2022).

<sup>8</sup> S. 903.045, F.S.

<sup>9</sup> S. 903.26(2)(a), F.S.

<sup>10</sup> S. 903.26(1), F.S.

<sup>11</sup> S. 903.26(2)(a), F.S.

forfeited bond must be paid by the bail bond agent within 60 days of the date the notice was mailed or transmitted.<sup>12</sup>

### *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 to pay the transportation cost of returning a defendant who is incarcerated in another county jail or prison to the jurisdiction of the court.<sup>13</sup> A bail bond agent who makes such an agreement prior to a breach of the bond can avoid the bond forfeiture and discharge process and is absolved from all future liability on the bail bond. The term “transportation cost” is not defined in statute. However, the Second District Court of Appeal has interpreted the term narrowly, applying only to actual transportation expenses.<sup>14</sup> This does not include ancillary costs associated with transportation, such as the salary of the officers involved in transporting the defendant, vehicle costs, meals, and lodging.<sup>15</sup>

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.<sup>16</sup> 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 issued the bond.<sup>17</sup> 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, 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 93 miles from Jefferson County to Franklin County.<sup>18</sup>

### **Effect of Proposed Changes**

CS/HB 381 amends the definition of “jurisdiction” in s. 903.21(3), F.S., to require a bail bond agent to transport an incarcerated defendant to the county from which the defendant was released on bail, rather than any county in the same judicial circuit, in order to be exonerated from liability on a bond prior to a breach. The bill also requires a bail bond agent to pay the costs and expenses incurred in returning a defendant to the court’s jurisdiction, rather than just the cost of transportation. The bill defines “costs and expenses” as the prorated salary of any law enforcement officer or employee of a contracted transportation company as well as the actual expenses of transporting each defendant

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<sup>12</sup> *Id.*

<sup>13</sup> S. 903.21(3), F.S.

<sup>14</sup> *Easy Bail Bonds v. Polk County*, 784 So. 2d 1173, 1177 (Fla. 2d DCA 2001).

<sup>15</sup> *Id.* at 1176.

<sup>16</sup> S. 903.21(3), F.S.

<sup>17</sup> 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
- 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.

<sup>18</sup> Google Maps, <http://www.google.com/maps/dir> (last visited Jan. 26, 2022).

which may only consist of mileage, vehicle expenses, meals, and, if necessary, overnight lodging for any law enforcement officer or employee of a contracted transportation company and the defendant.

The bill provides a surety is only responsible for the itemized costs and expenses incurred for the transport of a defendant to whom he or she has a fiduciary duty and is not liable for the costs and expenses incurred in transporting any other defendant. Requiring a bail bond agent to transport a defendant to the county where he or she was released on bond shifts the cost of transporting a defendant from the sheriff to the bail bond agent who is profiting off the bond.

The bill provides an effective date of July 1, 2022.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 903.21, F.S., relating to method of surrender; exoneration of obligors.

**Section 2:** Provides an effective date of July 1, 2022.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may reduce expenditures incurred by sheriffs from transporting a defendant from a county within a judicial circuit to the county from which a defendant was released on bail.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 26, 2022, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided a surety is responsible for the itemized costs and expenses incurred for the transport of a defendant to whom he or she has a fiduciary duty and is not liable for the costs of transporting any other defendant.
- Defined the term “costs and expenses.”

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.