

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1627 Pretrial Release and Detention

SPONSOR(S): Judiciary Committee and Criminal Justice Subcommittee, Garrison and others

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1534

FINAL HOUSE FLOOR ACTION: 83 Y's

19 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 1627 passed the House on April 13, 2023, and subsequently passed the Senate on April 26, 2023.

Under the Florida Constitution, a person who is arrested for committing a criminal offense is generally entitled to pretrial release on reasonable conditions unless a person is charged with a capital offense or a felony that is punishable by life imprisonment. 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.

The bill revises several statutes related to bail, pretrial detention, and pretrial release. Specifically, the bill:

- Amends s. 903.011, F.S., to:
 - Require the Florida Supreme Court (FSC) to develop a uniform statewide bond schedule by January 1, 2024;
 - Prohibit the chief judge of a judicial circuit from establishing a bond schedule that sets a lower bond amount for a criminal offense than the uniform statewide bond schedule without FSC approval;
 - Authorize the chief judge of a judicial circuit to establish a bond schedule that sets a higher bond amount for a criminal offense than the uniform statewide bond schedule; and
 - Prohibit a person from being released prior to his or her first appearance hearing if he or she has been arrested for committing any capital felony, life felony, first degree felony, or second degree felony; another specified offense; or otherwise meets specified criteria.
- Amends s. 903.047, F.S., to:
 - Require a court to consider the criteria used for determining bail in s. 903.046(2), F.S., when determining whether to impose nonmonetary conditions in addition to or in lieu of monetary bond; and
 - Specify nonmonetary conditions of pretrial release that a court may impose;
- Amends s. 903.0471, F.S., to authorize a court to revoke pretrial release and order pretrial detention if a defendant violates a condition of pretrial release in a material respect; and
- Amends s. 907.041, F.S. to:
 - Add DUI manslaughter, BUI manslaughter, trafficking in dangerous fentanyl and fentanyl analogues, extortion, and written threats to kill to the list of "dangerous crimes" which may subject a defendant to pretrial detention;
 - Prohibit a court from granting nonmonetary pretrial release at a first appearance hearing if a defendant is arrested for a dangerous crime and the court determines there is probable cause to believe the defendant committed the offense;
 - Require a state attorney, or a court on its own motion, to motion for pretrial detention if a defendant is arrested for a dangerous crime that is a capital felony, life felony, or first degree felony and the court determines there is probable cause to believe that the defendant committed the offense; and
 - Require a court to order pretrial detention of a defendant who is arrested for a dangerous crime if the court finds a substantial probability that the defendant committed the offense and that no conditions of release or bail will reasonably protect the community from risk of physical harm, ensure the presence of the defendant at trial, or assure the integrity of the judicial process.

The bill may have an indeterminate fiscal impact on the state court system in developing the uniform statewide bond schedule, may result in increased workload to the state court system in conducting first appearance and detention hearings required under the bill, and may have an indeterminate positive jail bed impact as it may increase the number of defendants who will be detained in a county detention facility prior to a first appearance hearing or trial.

The bill was approved by the Governor on May 1, 2023, ch. 2023-27, L.O.F., and will become effective on January 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Under article I, section 14 of the Florida Constitution, “[u]nless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.”

Bail

After a person has been arrested, he or she must appear before a judge within 24 hours of arrest, which is known as a “first appearance.”¹ At a first appearance, a judge advises a defendant of the charges for which he or she was arrested, determines whether there is probable cause that a defendant committed such an offense, and advises a defendant of specified rights.² If a judge determines that probable cause exists, the judge then determines whether a defendant is entitled to pretrial release. A judge may grant pretrial release either by setting a specified bail amount or releasing the defendant on his or her own recognizance.³

Bail Determination

The purpose of a bail determination in a criminal proceeding is to ensure the appearance of a defendant in subsequent proceedings and to protect the community against unreasonable danger from the defendant.⁴ In making a bail determination, a court may consider:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail or procure an appearance bond, particularly whether the proffered funds, real property, property, or any proposed collateral or bond premium may be linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.

¹ Fla. R. Crim. P. 3.130.

² *Id.*

³ Fla. R. Crim. P. 3.131.

⁴ S. 903.046(1), F.S.

- Whether the crime charged is a violation of ch. 874, F.S.,⁵ or alleged to be subject to enhanced punishment under ch. 874, F.S., or reclassification under s. 843.22, F.S.,⁶ in which case a defendant is required to be detained until first appearance.
- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S.,⁷ is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S., in which case a defendant is required to be detained until first appearance.

Restrictions on Pretrial Release

A court may not grant a defendant who is charged with a “dangerous crime” nonmonetary pretrial release at first appearance.⁸ A “dangerous crime” includes the following offenses:

- Arson;
- Aggravated assault;
- Aggravated battery;
- Illegal use of explosives;
- Child abuse or aggravated child abuse;
- Abuse of an elderly person or disabled adult, 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.⁹

After first appearance, a court retains the discretion to release a person charged with a dangerous crime on electronic monitoring or on a recognizance bond if the findings on the record of facts and circumstances warrant such a release.¹⁰

Pretrial Detention

⁵ Ch. 874, F.S., provides specified crimes and enhanced penalties for gang-related offenses.

⁶ S. 843.22, F.S., enhances a defendant’s sentence if he or she travels across county lines with the intent to commit a burglary.

⁷ Ch. 316, F.S., provides criminal traffic offenses.

⁸ S. 907.041(4)(b), F.S.

⁹ S. 907.041(4)(a), F.S.

¹⁰ S. 907.041(4)(b), F.S.

The state attorney may file a motion for pretrial detention if a defendant is charged with specified crimes, has previously violated conditions of release, is obstructing the judicial process, is on probation, or is on pretrial release for committing a dangerous crime.¹¹ The state attorney has the burden of showing the need for pretrial detention.¹²

A judge may order pretrial detention if he or she finds a substantial probability, based on a defendant's past and present patterns of behavior, consideration of the criteria used for determining bail, and any other relevant facts, that any of the following circumstances exist:

- The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;
- The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;
- The defendant is charged with trafficking in controlled substances under s. 893.135, F.S., there is a substantial probability that the defendant has committed the offense, and no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings;
- The defendant is charged with DUI manslaughter, there is a substantial probability that the defendant committed the crime, and the defendant poses a threat of harm to the community;
- The defendant poses the threat of harm to the community;¹³
- The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed;
- The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial; or
- The defendant:
 - Has previously been sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;
 - There is a substantial probability that the defendant committed the offense; and
 - There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.¹⁴

Bond Schedules

To improve efficiency and ensure consistency in determining a defendant's bail amount, the Chief Judge of a judicial circuit may issue an administrative order promulgating a "bond schedule." Generally, a bond schedule provides the bail amount required to bond out of jail for a specified crime *prior* to first appearance.¹⁵ A bond schedule also prohibits certain defendants from being released before first appearance due to the severity of the offense committed or the status of the defendant.¹⁶ If a defendant is prohibited from being released before first appearance, his or her bond is set by a judge at a first appearance.

¹¹ S. 907.041(4)(f), F.S.

¹² S. 907.041(4)(g), F.S.

¹³ A court may conclude a defendant poses the threat of harm to the community if the defendant is charged with a dangerous crime, there is a substantial probability that the defendant committed such crime, the factual circumstances of the crime indicate a disregard for the safety of the community, and there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. S. 907.041(4)(c)5., F.S.

¹⁴ S. 907.041(4)(c), F.S.

¹⁵ Twelfth Judicial Circuit, *Bond Schedule for Criminal Proceedings*, https://www.jud12.flcourts.org/Portals/0/AdminOrders/Section03/13-11.3.pdf?ver=JvXXR9P2G_o2gySEJ1qhsA%3D%3D (last visited Mar. 31, 2023).

¹⁶ For example, a defendant who is arrested for a violation of felony probation or community control may not be granted bail in specified circumstances. See s. 903.0351, F.S.

Pretrial Release

Conditions of Pretrial Release

Section 903.047, F.S., requires a defendant, as a condition of pretrial release on a surety bond, recognizance bond, or other form of bond to:

- Refrain from criminal activity of any kind;
- If the court issues an order of no contact, to refrain from any contact of any type with the victim; and
- Comply with all conditions of pretrial release.

Revocation of Pretrial Release

Section 903.0471, F.S., authorizes a court, on its own motion, to revoke pretrial release and order pretrial detention if a court finds probable cause to believe that a defendant committed a new crime while on pretrial release.

Effect of the Bill

Bond Schedules

The bill amends s. 903.011, F.S., to require the Florida Supreme Court (FSC) to adopt, by January 1, 2024, a uniform statewide bond schedule for all criminal offenses except those offenses which require a defendant to be detained until first appearance. The bill authorizes the chief judge of a judicial circuit to establish a local bond schedule that increases the monetary bond applicable to a criminal offense that is included in the statewide bond schedule without FSC approval. However, the bill prohibits a chief judge of a judicial circuit from establishing a local bond schedule that sets a lower bond amount than that required by the uniform statewide bond schedule. Under the bill, a chief judge may petition the FSC to approve a local bond schedule that sets a lower bond amount than that which is required by the uniform statewide bond schedule. If the FSC approves such a local bond schedule, the schedule may be used by the judicial circuit.

In adopting the uniform statewide bond schedule or reviewing a petition for a local bond schedule that deviates from the uniform statewide bond schedule, the FSC must evaluate the amount of monetary bond necessary to protect the community from risk of physical harm, to assure the presence of the accused at trial, and to protect the integrity of the judicial process.

First Appearance

Under the bill, a defendant may not be released prior to his or her first appearance if the defendant:

- Was on pretrial release, probation, or community control in this state or any other state at the time of arrest for a felony;
- Was designated as a sexual offender or sexual predator in this state or any other state at the time of arrest;
- Was arrested for violating a protective injunction;
- Was, at the time of arrest, on release from supervision by the Department of Corrections under conditional release, control release, conditional medical release, or an addiction recovery supervision program;
- Has, at any time before the current arrest, been sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;
- Has been arrested three or more times in the six months immediately preceding his or her current arrest; or
- Was arrested for one or more of the following crimes:

- A capital felony, life felony, first degree felony, or second degree felony;
- A homicide under ch. 782, F.S.; or any attempt, solicitation, or conspiracy to commit a homicide;
- Assault in furtherance of a riot or an aggravated riot; felony battery; domestic battery by strangulation; domestic violence, as defined in s. 741.28, F.S.; stalking; mob intimidation; assault or battery on a law enforcement officer; assault or battery on juvenile probation officer or other staff of a detention center or commitment facility, or a staff member of a commitment facility or health services personnel; assault or battery on a person 65 years of age or older; robbery; burglary; carjacking; or resisting an officer with violence;
- Kidnapping, false imprisonment, human trafficking, or human smuggling;
- Possession of a firearm or ammunition by a felon, violent career criminal, or person subject to an injunction against committing acts of domestic violence, stalking, or cyberstalking;
- Sexual battery; indecent, lewd, or lascivious touching; exposure of sexual organs; incest; luring or enticing a child; or child pornography;
- Abuse, neglect, or exploitation of an elderly person or disabled adult;
- Child abuse or aggravated child abuse;
- Arson; riot, aggravated riot, inciting a riot, or aggravated inciting a riot; or a burglary or theft during a riot;
- Escape; tampering or retaliating against a witness, victim, or informant; destruction of evidence; or tampering with a jury;
- Any offense committed for the purpose of benefitting, promoting, or furthering the interests of a criminal gang;
- Trafficking in a controlled substance, including conspiracy to engage in trafficking in a controlled substance;
- Racketeering; or
- Failure to appear at required court proceedings while on bail.

Pretrial Detention

The bill amends s. 907.041, F.S., to add DUI manslaughter under s. 316.193, F.S., BUI manslaughter under s. 327.35, F.S., trafficking in dangerous fentanyl or fentanyl analogues in s. 893.135(1)(c)4., F.S., extortion under s. 836.05, F.S., and written threats to kill under s. 836.10, F.S., to the list of dangerous crimes that may subject a defendant to pretrial detention.

The bill prohibits a court from granting nonmonetary pretrial release at a first appearance hearing to a defendant who is arrested of a dangerous crime if the court determines there is probable cause to believe the defendant committed the offense.

Under the bill, if a defendant is arrested for a dangerous crime that is a capital felony,¹⁷ a life felony,¹⁸ or a first degree felony¹⁹ and the court determines there is probable cause to believe that the defendant committed the offense, the state attorney or the court, on its own motion, must motion for pretrial detention. A court *must* order pretrial detention if he or she finds a substantial probability a defendant committed such an offense and, based on the defendant's past and present patterns of behavior, consideration of the criteria used for determining bail, and any other relevant facts, the court finds that no conditions of release or bail will reasonably protect the community from risk of physical harm, ensure the presence of the defendant at trial, or assure the integrity of the judicial process.

If a defendant is arrested for a dangerous crime that requires a court or a state attorney to file a motion for pretrial detention, such pretrial detention hearing must be held within five days of a defendant's first appearance hearing or, if there is no first appearance hearing, within five days of the defendant's

¹⁷ A capital felony is punishable by death. S. 775.082, F.S.

¹⁸ A life felony is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment and a \$15,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁹ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

arraignment.²⁰ If a court determines that such a defendant should be released on bail pending the pretrial detention hearing, the court must inform the defendant that if he or she uses a surety bond to meet the monetary component of pretrial release and the motion for pretrial detention is subsequently granted, the defendant will not be entitled to the return of the premium on such surety bond.

Under the bill, if the state attorney files a discretionary motion for pretrial detention, the pretrial detention hearing must be held within five days after the filing of the motion for pretrial detention.

The bill authorizes any party to motion for reconsideration of a pretrial detention order at any time before a defendant's trial if the judge finds that information exists that was not known to the party moving for reconsideration at the time of the pretrial detention hearing if such information has a material bearing on determining whether there are conditions of release or bail that will reasonably assure the appearance of the defendant as required and the safety of any other person and the community from harm.

Pretrial Release

Conditions of Pretrial Release

The bill amends s. 903.047, F.S., to require a court to consider the same factors used in determining bail when determining whether to impose nonmonetary conditions of pretrial release in addition to or in lieu of a monetary bond. Under the bill, such nonmonetary conditions may include, but are not limited to, requiring a defendant to:

- Maintain employment, or, if unemployed, actively seek employment.
- Maintain or commence an educational program.
- Abide by specified restrictions on personal associations, place of residence, or travel.
- Report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency.
- Comply with a specified curfew.
- Refrain from possessing a firearm, destructive device, or other dangerous weapon.
- Refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription from a licensed medical practitioner.
- Undergo available medical, psychological, psychiatric, mental health, or substance abuse evaluation and follow all recommendations, including treatment for drug or alcohol dependency, and remain in a specified institution, if required for that purpose.
- Return to custody for specified hours following release for employment, school, or other limited purposes.
- Any other condition that is reasonably necessary to assure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger of harm.

Revocation of Pretrial Release

The bill amends s. 903.0471, F.S., to authorize a court to revoke pretrial release and order pretrial detention if a person on pretrial release violates *any* condition of pretrial release in a material respect.

The effective date of this bill is January 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²⁰ Generally, arraignment is a defendant's first court appearance after first appearance. At arraignment, a defendant is formally advised of charges filed by the State and advised of specified rights.

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on the state court system in developing and implementing the uniform statewide bond schedule and may result in increased workload to the state court system in conducting first appearance and detention hearings required under the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive jail bed impact as it may increase the number of defendants who will be detained in a county detention facility prior to first appearance or trial.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.