

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 582

INTRODUCER: Senator Grall

SUBJECT: Withholding Funds from the Return of Cash Bonds

DATE: April 3, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	<b>Pre-meeting</b>
2.			CJ	
3.			RC	

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## I. Summary:

SB 582 limits the withholding of costs, fines and fees from a cash bond posted on behalf of a criminal defendant to only apply when the bond was posted by the defendant or his or her spouse. Currently, upon final disposition of a criminal case the clerk withholds costs, fines and fees from the return of any cash bond posted in the criminal case.

The clerks of court estimate that this bill will have an indeterminate but potentially significant negative fiscal impact to the clerks and other state trust funds.

The bill is effective July 1, 2023.

## II. Present Situation:

### Pretrial Release — In General

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

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<sup>1</sup> FLA. CONST. article I, s. 14.

<sup>2</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>3</sup> Section 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,

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 a victim, if applicable.<sup>4</sup> If a defendant violates pretrial release conditions, he or she may be arrested and held to answer before the court having jurisdiction to try the defendant.<sup>5</sup>

### **Monetary Bail as a Condition of Pretrial Release**

Monetary bail is a common condition of pretrial release. Bail requires a defendant, or a person acting on behalf of the defendant, to pay a set sum of money to the court to be released from jail while awaiting further court proceedings.<sup>6</sup> If a defendant released on bail fails to appear before the court for any proceeding where his or her presence is required, the bail money may be forfeited and a warrant issued for the defendant's arrest.

In determining whether to release a defendant on bail and setting a bail amount, a judge must 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.
- 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.
- Whether the crime charged is a violation of ch. 874, F.S., relating to criminal gangs or subject to reclassification under s. 843.22, F.S., for committing the offense of traveling across county lines with the intent to commit a burglary.
- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor criminal traffic offense under ch. 316, F.S., is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.<sup>7</sup>

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F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking. S. 907.041(4), F.S.

<sup>4</sup> Section 903.047, F.S.

<sup>5</sup> Sections 903.0471 and 907.041, F.S.

<sup>6</sup> Section 903.011, F.S.

<sup>7</sup> Section 903.046(2), F.S.

### Posting Bail with Cash and Clerk Withholding

While many bail amounts are satisfied using a bail bondsman, some defendants, or a person acting on the defendant's behalf such as a spouse, family member, or friend, post the entire bail amount to secure the defendant's release. This is commonly referred to as a cash bond.<sup>8</sup>

Section 903.286(1), F.S., requires the clerk of the court, after the final disposition of a defendant's court proceeding, and provided the bail was not forfeited for failure to appear, to withhold from the return of a cash bond posted on behalf of a criminal defendant by any person other than a bail bond agent sufficient funds to pay any:

- Costs of prosecution;<sup>9</sup>
- Costs of representation by the public defender;<sup>10</sup>
- Court fees;
- Court costs; and
- Criminal penalties.<sup>11</sup>

If, after payment of such fines, fees, and costs, there are funds remaining from the cash bond, the balance of the cash bond is returned to the defendant or other person that posted the cash bond. If the cash bond is insufficient to pay the amount of the fines, fees, and costs, the balance due is charged to the defendant.

Section 903.286(2), F.S., requires all cash bond forms to prominently display a notice that the cash bond is subject to forfeiture if a defendant fails to appear for court, and that the clerk of court, after the final disposition of a defendant's case, is authorized to withhold sufficient funds from the cash bond to pay specified fines, fees, and court costs on behalf of the defendant.

### III. Effect of Proposed Changes:

SB 582 amends s. 903.286(1), F.S., to require the clerk of the court to withhold funds from the return of a cash bond to pay fines, fees, and court costs imposed at the conclusion of a criminal case only when the bail was posted by a criminal defendant or his or her spouse. Thus, where a defendant's cash bond is posted by a third party such as a non-spouse relative or friend, the clerk of the court may not withhold funds from the cash bond at the conclusion of the defendant's

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<sup>8</sup> In the alternative, a defendant may elect to use a criminal surety bail bond executed by a bail bond agent. 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. This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances. Section 903.105, F.S. See also Florida Dept. of Financial Services, *Bail Bonds Overview* <https://www.myfloridacfo.com/division/consumers/understandingcoverage/bailbondsoverview.htm> (last visited Feb. 15, 2023).

<sup>9</sup> Costs of prosecution are generally set at \$50 for a misdemeanor or criminal traffic offense and \$100 for a felony offense. The court may award a higher amount upon a showing of sufficient proof that higher costs were incurred by the prosecution. Proceeds are deposited into the State Attorneys Revenue Trust Fund. Section 938.27(8), F.S.

<sup>10</sup> Costs of representation by the public defender include a \$50 initial application fee and a \$50 fee for legal representation for a misdemeanor or criminal traffic offense and \$100 for legal representation for a felony offense. The court may award a higher amount upon a showing of sufficient proof that higher fees or costs were incurred by the public defender. Proceeds are deposited into the Indigent Criminal Defense Trust Fund. Sections 27.52 and 938.29, F.S.

<sup>11</sup> Section 903.286, F.S. The amount of court fees, court costs, and criminal penalties vary depending on the jurisdiction and the nature of the defendant's criminal charge. The fees, costs, and fines are used to fund the operations of the court system, as well as various other programs related to criminal justice. See ch. 938, F.S.

criminal case to pay specified fees and costs associated with the defendant's criminal court case. Instead, the obligation to pay such fees and costs will be on the defendant.

The bill also amends s. 903.286(2), F.S., to revise the notice provided on all cash bond forms to specify that the clerk of the court may withhold funds posted by the defendant or his or her spouse to pay specified fines, fees, and costs.

The bill takes effect July 1, 2023.

#### **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:

None.

C. Government Sector Impact:

The clerks of court estimate that this bill "would have an indeterminate but potentially significant negative fiscal impact to the Clerks and other state Trust Funds." The clerks currently collect approximately 9% of all monies due from defendants in felony criminal cases.<sup>12</sup>

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<sup>12</sup> Florida Court Clerks and Comptrollers, *Bill Analysis to HB 65 and SB 582*, page 2.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 903.286 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.