

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: Appropriations Committee on Criminal and Civil Justice

BILL: SB 7068

INTRODUCER: Appropriations Committee on Criminal and Civil Justice

SUBJECT: Pretrial Detention Hearings

DATE: February 22, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Kulich	Harkness		ACJ Submitted as Comm. Bill/Fav

I. Summary:

SB 7068 amends s. 907.041, F.S., to allow a court to base an order of pretrial detention under s. 907.041(5)(d), F.S., solely on hearsay. This ensures that victims and other witnesses are not required to appear in person at pretrial detention hearings.

Section 907.041(5), F.S., specifies circumstances in which the state has discretion to motion for pretrial detention, and circumstances in which the state, or the court, must motion for pretrial detention. Paragraph (5)(d), provides the circumstances in which a motion for pretrial detention *must* be made.

The bill changes the evidentiary requirements for a pretrial detention hearing, but does not affect the requirement to hold such a hearing, the standard of proof at such a hearing, or the time frame in which the hearing must be conducted.

The bill may have an indeterminate fiscal impact on state and local government expenditures. See Section V., Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Article I, s. 14 of the Florida Constitution states that “[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

A person must appear before a judge within 24 hour of arrest for a “first appearance”.¹ During 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

Pretrial Detention

Defendants may be held without bail under the Florida Constitution if they are charged with a capital offense, or an offense that is punishable by life imprisonment.⁴ These pretrial detention hearings are often referred to as *Arthur* hearings. The Florida Supreme Court has held that to detain a defendant, the state must present some evidence in addition to the information or indictment that establishes that the defendant’s proof of guilt is evident or the presumption is great.⁵ This is a higher standard than the beyond a reasonable doubt standard used to convict a defendant at trial, and the state may rely solely on hearsay to meet the standard.

Section 907.041, F.S., also permits or requires the state to motion for a pretrial detention hearing based upon the circumstances of the case. In pretrial detention hearings under statutory provisions, the state must meet the beyond a reasonable doubt standard.⁶ This is a lower standard than the state must meet in an *Arthur* hearing, however court rule provides that the state may not present only hearsay evidence.

Discretionary Motion for Pretrial Detention

Under s. 907.041, F.S., upon a motion by the state attorney, the court may order pretrial detention if it 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;

¹ Fla. R. Crim. P. 3.130.

² *Id.*

³ Fla. R. Crim. P. 3.131.

⁴ Art. I, s. 14, Fla. Const.

⁵ *See State v. Arthur*, 390 So. 2d 717 (Fla. 1980).

⁶ Fla. R. Crim. P. 3.131.

- 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;⁷
- The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime⁸ 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.⁹

Mandatory Motion for Pretrial Detention

In 2023, the Legislature enacted several changes to bail and pretrial detention proceedings in s. 907.041, F.S., which went into effect on January 1, 2024.¹⁰ One of the more significant changes required the state attorney or the court, on its own motion, to motion for pretrial detention if a defendant is arrested for a dangerous crime that is a capital felony,¹¹ a life felony,¹² or a first degree felony¹³ and the court determines there is probable cause to believe that the defendant committed the offense.¹⁴ A judge must order pretrial detention if:

- He or she finds a substantial probability that the defendant committed such an offense; and,

⁷ 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. Section 907.041(5)(c)5., F.S.

⁸ A “dangerous crime” includes: 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 including DUI manslaughter and BUI 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; an act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; an 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; human trafficking; trafficking in dangerous fentanyl or fentanyl analogues; extortion; or written threats to kill. Section 907.041(5)(a), F.S.

⁹ Section 907.041(5)(c), F.S.

¹⁰ See ch. 2023–27, Laws of Fla.

¹¹ A capital felony is punishable by death or mandatory life imprisonment. Section 775.082, F.S.

¹² 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. Sections 775.082, 775.083, or 775.084, F.S.

¹³ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082, 775.083, or 775.084, F.S.

¹⁴ Section 907.041(5)(d), F.S.

- 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.¹⁵

Pretrial Detention Procedures

In a pretrial detention hearing, the defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses.¹⁶ The rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of evidence in pretrial detention proceedings; however, evidence that was secured in violation of the United States Constitution or Florida Constitution is inadmissible.¹⁷ If a defendant chooses to testify at a pretrial detention hearing, his or her statements are not admissible to prove guilt in any other criminal proceeding other than in an action for perjury or for impeachment purposes.¹⁸ In both a discretionary and mandatory motion for pretrial detention, the state attorney has the burden of showing the need for pretrial detention.¹⁹

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 arraignment.²⁰ 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.²¹

Any party may file a 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.

Any party may file a 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.²²

¹⁵ *Id.*

¹⁶ S. 907.041(5)(i), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 907.041(5)(h), F.S.

²⁰ Section 907.041(5)(g), F.S. 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.

²¹ *Id.*

²² Section 907.041(5)(j), F.S.

Florida Rules of Criminal Procedure

Rule 3.131. Pretrial Release

The Florida Rules of Criminal Procedure govern the procedure in all criminal proceedings in state courts. Rule 3.131 mirrors the right to bail under article I, section 14 of the Florida Constitution, and provides every person the right to pretrial release on reasonable conditions unless:

- He or she is charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great; or
- 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.²³

In *State v. Arthur*, the Florida Supreme Court (FSC) held that, to preclude a defendant who is charged with a capital offense or offense punishable by life imprisonment from being released on bail, the state attorney must present some evidence in addition to the information or indictment that establishes that the defendant's proof of guilt is evident or the presumption is great, which is a higher standard²⁴ than what is necessary to prove a defendant guilty at trial.²⁵ The FSC specified in *Arthur* that such evidence could be presented in the form of hearsay, including transcripts or affidavits and other evidence relied upon by the grand jury or state attorney in charging the crime.²⁶ "Hearsay" is a statement, other than one made by the declarant²⁷ while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.²⁸

Rule 3.132. Pretrial Detention

For cases where a defendant is either not charged with a capital offense or an offense punishable by life imprisonment, or where the state attorney elects to file a motion for pretrial detention under s. 907.041, F.S., Rule 3.132, provides procedures that a court must follow.²⁹ Rule 3.132 generally mirrors the statutory language of s. 907.041, F.S.; however, Rule 3.132, differs in two ways: by requiring the state attorney to show the need for pretrial detention beyond a reasonable doubt, and by prohibiting a final order of pretrial detention from being based exclusively on hearsay evidence.³⁰ The FSC has not amended Rule 3.132 since the Legislature significantly modified the law relating to pretrial detention in the 2023 Session. The current hearsay prohibition in Rule 3.132, coupled with the requirement for mandatory pretrial detention hearings in s. 907.041(5)(d), F.S., that went into effect on January 1, 2024,³¹ may be interpreted

²³ Fla. R. Crim. P. 3.131(a).

²⁴ "...the degree of proof sufficient to deny an accused the right to bail in a capital case under our Constitution, to -wit, proof that guilt is evident or the presumption of guilt is great is actually a greater degree of proof than that which is required to establish guilt merely to the exclusion of a reasonable doubt." *State v. Williams*, 87 So. 2d 45 (Fla. 1956). See also *Russell v. State*, 71 So. 27 (Fla. 1916).

²⁵ 2 *State v. Arthur*, 390 So. 2d 717, 720 (Fla. 1980); *Preston v. Gee*, 133 So. 3d 1218 (Fla. 2d DCA 2014).

²⁶ *Id.*

²⁷ A "declarant" is a person who makes a statement. S. 90.801(1)(a), F.S.

²⁸ S. 90.801(1)(b), F.S.

²⁹ Fla. R. Crim. P. 3.132.

³⁰ Fla. R. Crim. P. 3.132(c)(1).

³¹ *Supra*, note 7.

to require a state attorney to subpoena victims, witnesses, and law enforcement officers to appear at a pretrial hearing and be subjected to cross-examination at such a hearing.³²

III. Effect of Proposed Changes:

SPB 7068 amends s. 907.041, F.S., to authorize a court to base an order of pretrial detention under s. 907.041(5)(d), F.S., solely on hearsay.

Section 907.041(5), F.S., specifies circumstances in which the state has discretion to motion for pretrial detention, and circumstances in which the state, or the court, must motion for pretrial detention. Paragraph (5)(d), provides the circumstances in which a motion for pretrial detention *must* be made.

This provides that pretrial detention hearings under s. 907.041, F.S., may be based on the same type of evidence as that presented in an *Arthur* hearing, thereby ensuring that victims and other witnesses are not required to appear in person at pretrial detention hearings.

The bill is effective upon becoming a law.

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:

The confrontation clause under the Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him.”³³ Thus, a defendant in a criminal proceeding has the right to physically face witnesses who are testifying against him or her and the

³² The Criminal Procedure Rules Committee is currently in the process of revising Rule 3.132. The most recent draft of this revision retains the prohibition on a court basing a final order of pretrial detention exclusively on hearsay evidence. Criminal Procedure Rules Committee Agenda, January 26, 2024.

³³ U.S. Const. amend VI.

right to conduct a cross-examination of such witnesses.³⁴ As such, the confrontation clause generally limits the admission of hearsay in criminal proceedings since such hearsay is made out-of-court and the defendant does not have an opportunity to conduct a cross-examination of the declarant. However, the confrontation clause is a right that attaches at trial and does not apply to other ancillary criminal proceedings, such as a pretrial detention hearing.³⁵ In *Godwin v. Johnson*, the Florida First District Court of Appeal explicitly held that the confrontation clause did not apply in a pretrial detention proceeding.³⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill changes the evidentiary requirements for a pretrial detention hearing, but does not affect the requirement to hold such a hearing, the standard of proof at such a hearing, or the time frame in which the hearing must be conducted. If there is an increase in motions for pretrial detention there may be a workload impact to the State Courts System; however, this impact can likely be absorbed within existing resources. Moreover, if there is an increase in orders of pretrial detention, there may be a negative fiscal impact to county jails.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 907.041 of the Florida Statutes.

³⁴ *Pennsylvania v. Ritchie*, 480 U.S. 39, 51 (1987).

³⁵ *Barber v. Page*, 390 U.S. 179 (1968). *Bruton v. United States*, 391 U.S. 123 (1968).

³⁶ *Godwin v. Johnson*, 957 So. 2d 39 (Fla. First DCA 2007).

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
