

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 717 No Contact Orders

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Raschein and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 342

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Judiciary Committee	16 Y, 0 N, As CS	Cox	Havlicak

SUMMARY ANALYSIS

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges. With some exceptions, every person charged with a crime is 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.

When pretrial release is granted, s. 903.047, F.S., requires the court to impose a condition specifying that the defendant must "refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure." Currently, s. 903.047, F.S., does not specify what actions are encompassed by the phrase "any contact of any type with the victim." As such, it is unclear what type of contact is prohibited.

The bill amends s. 903.047, F.S., clarifying that an order of no contact is effective immediately and enforceable for the duration of the pretrial release or until modified by the court. The bill also provides that, unless otherwise specified by the court, the term "no contact" includes:

- Communicating orally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with the victim or any other person named in the order;
- Having physical or violent contact with the victim or other named person or his or her property;
- Being within 500 feet of the victim's or other named person's residence, even if the defendant and the victim or other named person share the residence; and
- Being within 500 feet of the victim's or other named person's vehicle, place of employment, or a specified place frequented regularly by such person.

The bill provides two limited exceptions to the prohibition against oral or written communication between the defendant and victim or other persons named in the no contact order.

Additionally, the bill requires the defendant to receive a copy of the order of no contact specifying the applicable prohibited acts before being released from custody on pretrial release.

The Office of the State Courts Administrator (OSCA) anticipates that the bill may cause a temporary increase in the number of contempt proceedings or prosecutions for violations of conditions of release. However, OSCA does anticipate that the impact of the bill will be manageable within its existing resources. Additionally, to the extent the bill results in more defendants violating their conditions of pretrial release and being detained, it could have a negative jail bed impact.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pretrial Release

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.¹ 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 conditions.² 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.³

When determining whether to release a defendant on pretrial release, and what the conditions of pretrial release should be, the court 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 (e.g., record of convictions, previous flight to avoid prosecution, 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;⁴
- 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 involved in the criminal charge;
- 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 alleged to be subject to enhanced punishment under ch. 874, F.S.; and
- Whether the defendant is required to register as a sexual offender or a sexual predator.⁵

Generally, pretrial release is granted in one of three ways - by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.⁶ In each instance, s. 903.047, F.S., requires the court to impose a condition specifying that the defendant must "refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure."⁷

The court may detain a defendant if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria described above, and any other relevant facts, that the defendant has violated a condition of pretrial release and the violation, in the discretion of the court,

¹ Report No. 14-13, "County Pretrial Release Programs: Calendar Year 2013," Office of Program Policy Analysis & Government Accountability, December 2014.

² The conditions of pretrial release are determined at a defendant's first appearance hearing. FLA. R. CRIM. PROC. 3.130(d).

³ FLA. CONST. art. I, s. 14, FLA. R. CRIM. PROC. 3.131(a).

⁴ 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. s. 903.046(2)(f), F.S.

⁵ s. 903.046(2), F.S.

⁶ Report No. 14-13, "County Pretrial Release Programs: Calendar Year 2013," Office of Program Policy Analysis & Government Accountability, December 2014.

⁷ Upon motion by the defendant, the court may modify this conditions if good cause is shown and the interests of justice so require. The victim has the right to be heard at such a proceeding, and the state attorney must notify the victim of the pendency of any such proceeding. s. 903.047(2), F.S.

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.⁸

Effect of the Bill

As noted above, when a defendant is granted pretrial release, s. 903.047, F.S., requires the court to impose a condition specifying that the defendant must “refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure.”

Section 903.047, F.S., does not specify what actions are encompassed by the phrase “any contact of any type with the victim.” As such, it is unclear what type of contact is prohibited.

The bill amends s. 903.047, F.S., clarifying that an order of no contact is effective immediately and enforceable for the duration of the pretrial release or until modified by the court. The bill also provides that, unless otherwise specified by the court, the term “no contact” includes:

- Communicating orally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with the victim or any other person named in the order;
- Having physical or violent contact with the victim or other named person or his or her property;
- Being within 500 feet of the victim's or other named person's residence, even if the defendant and the victim or other named person share the residence; and
- Being within 500 feet of the victim's or other named person's vehicle, place of employment, or a specified place frequented regularly by such person.

If applicable, the bill permits a court, at the defendant's request, to designate an appropriate third party to contact the victim for the sole purpose of facilitating the defendant's contact with any children the parties have in common. The bill also clarifies that an attorney for the defendant may communicate with any person protected by the no contact order, provided the contact is for lawful purposes and is consistent with the rules regulating The Florida Bar.

The bill requires the defendant to receive a copy of the order of no contact specifying the applicable prohibited acts before being released from custody on pretrial release.

The bill also reenacts ss. 741.29, 784.046, and 901.15, F.S., for purposes of incorporating the changes made to s. 903.047, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 903.047, F.S., relating to conditions of pretrial release.

Section 2. Reenacts s. 741.29, F.S., relating to domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.

Section 3. Reenacts s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 4. Reenacts s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 5. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁸ s. 907.041(4)(c), F.S.

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Office of the State Courts Administrator (OSCA) anticipates that the bill may cause a temporary increase in the number of contempt proceedings or prosecutions for violations of conditions of release, but OSCA cannot accurately determine the fiscal impact of the legislation due to the unavailability of data needed to determine its impact on judicial workloads.⁹ Nevertheless, OSCA anticipates that the impact of the bill will be manageable within its existing resources.¹⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill clarifies what types of contact are prohibited during pretrial release. To the extent this results in more defendants violating their conditions of pretrial release and being detained, it could have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁹ Office of the State Courts Administrator, Agency Bill Analysis for SB 342, which was identical to HB 717 as originally filed (on file with the Criminal Justice Subcommittee).

¹⁰ *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment requires the defendant to receive a copy of the order of no contact specifying the applicable prohibited acts before being released from custody on pretrial release.

On March 19, 2015, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided two exceptions to the prohibition against oral or written communication between the defendant and victim or other persons named in the no contact order, specifically permitting:

- A court may, at the defendant's request, designate an appropriate third party to contact the victim for the sole purpose of facilitating the defendant's contact with any children the parties have in common; and
- An attorney for the defendant to communicate with any person protected by the no contact order, provided the contact is for lawful purposes and is consistent with the rules regulating The Florida Bar.

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