

**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 Criminal Justice

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BILL: SB 1218

INTRODUCER: Senator Brandes

SUBJECT: Persons Awaiting Trial

DATE: January 26, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 1218 creates a three-year Risk Assessment Pilot Program, contingent upon appropriations and a contract with each participating county and the Department of Corrections (DOC). The counties eligible for participation include Hillsborough, Pasco, and Pinellas Counties. The sheriff from each participating county must enter into a contract with the DOC to administer the risk assessment instrument (RAI) to all persons arrested for a felony in the participating county for the purpose of determining appropriate programming and sentencing.

The bill requires the DOC to develop a RAI by March 1, 2019, and implement the RAI by June 30, 2019. The RAI must consider specified criteria and the DOC is authorized to utilize or modify an existing RAI if it contains the criteria enumerated in the bill.

The bill requires a representative of the county's chief correctional officer (sheriff) to administer the RAI to a person arrested and provides for the administration of such RAI. Upon completion of a RAI report, the report must be provided to specified entities.

The bill requires each participating county to provide specified information to the DOC annually by July 1 of each year of the pilot program. The DOC is required to compile the county reports and submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program. The bill also provides legislative findings for the program.

The bill also authorizes a county or municipal law enforcement agency to establish a charitable bail fund and to use the remaining proceeds of any contraband articles forfeited under the Contraband Forfeiture Act to post bail for indigent defendants. The bill prohibits a court from considering that the source of bail funds derives from criminal or illicit activity in a court's determination of whether to release a defendant on bond when the criminal funds are being utilized through a charitable bail program. "Charitable bail fund" is defined to mean a fund

established and administered by a county or municipality which posts bail for indigent defendants.

The bill will likely have a fiscal impact on counties and the DOC. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

## II. Present Situation:

### Bond

There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance.<sup>1</sup>

#### *Bail and Surety Bond*

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant, regardless of the severity of his or her crime, at subsequent proceedings and to protect the community against unreasonable danger from the defendant.<sup>2</sup> Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S.<sup>3</sup> For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond that he or she will return for trial and any other required court appearances.<sup>4</sup>

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond<sup>5</sup> executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to ten percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.<sup>6</sup>

#### *Pretrial Release Conditions*

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;

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<sup>1</sup> See art. I, s. 14, Fla. Const.; See also ss. 903.046 and 907.041, F.S.

<sup>2</sup> Section 903.046(1), F.S.

<sup>3</sup> "Bail," Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

<sup>4</sup> *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

<sup>5</sup> Sections 903.011 and 903.105, F.S.

<sup>6</sup> Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2016*, Report No. 17-12, at 2. (Dec. 2017) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1712rpt.pdf> (last visited January 24, 2018).

- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- Comply with any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.<sup>7</sup>

### ***Release on Recognizance***

A defendant released on his or her own recognizance is released without a monetary requirement and without any conditions of release or supervision of any type.<sup>8</sup>

### ***A Court's Determination of Pretrial Release***

The judge must consider all available relevant factors during the first appearance hearing to determine what form of pretrial release is necessary to assure the defendant's appearance and the community's safety. One factor that the court must consider when determining whether to release a defendant on bail or other pretrial conditions is the source of funds used to post bail or procure an appearance bond. The court must specifically determine 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. The burden of establishing that the funds for the bond or bond premium are not involved or derived from criminal or other illicit activity rests with the defendant or other person proffering them to obtain the defendant's release.<sup>9</sup>

### **Evidence-Based Risk Assessment Tools**

Risk and needs assessment instruments measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.<sup>10</sup> RAIs consist of a set of questions that guide face-to-face interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminal reoffending. The questioner typically supplements the interview with an official records check, including prior arrests and incarcerations. Responses are statistically weighted, based on research that shows how strongly each item correlates with recidivism. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.<sup>11</sup>

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors do not change, while dynamic risk factors can either change on their own or be changed through an intervention. Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a

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<sup>7</sup> Rule 3.131(b)(1), Fla. R. Crim. Pro.

<sup>8</sup> Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

<sup>9</sup> Section 903.046(2)(f), F.S.

<sup>10</sup> Congressional Research Service, *Risk and Needs Assessment in the Criminal Justice System*, Nathan James, p. 2 (October 13, 2015), available at <https://fas.org/sgp/crs/misc/R44087.pdf> (last visited January 25, 2018) (hereinafter cited at CRS Report).

<sup>11</sup> *Id.*, p. 2-4.

past history of violating terms of supervision.<sup>12</sup> Dynamic risk factors, also called “criminogenic<sup>13</sup> needs,” can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence.<sup>14</sup>

The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment. The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender.<sup>15</sup>

In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.<sup>16</sup>

### *Use of Risk Assessment Instruments by the Department of Corrections*

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.<sup>17</sup> Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.<sup>18</sup> Spectrum has been independently verified through the School of Criminology at the Florida State University.<sup>19</sup>

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.<sup>20</sup> Spectrum calculates an

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<sup>12</sup> CRS Report, p. 3.

<sup>13</sup> “Criminogenic” is commonly understood to mean factors that can contribute to criminal behavior. CRS Report, p. 3.

<sup>14</sup> CRS Report, p. 3.

<sup>15</sup> CRS Report, p. 2 and 6.

<sup>16</sup> *Id.*

<sup>17</sup> DOC, Spectrum Video, available at <https://www.youtube.com/watch?v=WRI5ldWf5MY&feature=youtu.be> (last visited January 25, 2018) (hereinafter cited as “Spectrum Video”); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as “DOC Program Information”).

<sup>18</sup> Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

<sup>19</sup> Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum “produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States.”

<sup>20</sup> DOC Program Information.

individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains<sup>21</sup> and three core program areas.<sup>22</sup>

The DOC utilizes the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during the administration of Spectrum is also used to assist with transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.<sup>23</sup>

Spectrum was completed in September, 2016, and subsequently deployed throughout the state. In the press release announcing the completion, Secretary Julie Jones stated the DOC is using Spectrum to gather the information needed to build individual re-entry and rehabilitation plans for inmates under the supervision of the DOC. Secretary Jones further stated that the proper utilization of this information will enable the DOC staff to provide the right services at the right time to have the greatest impact on the rehabilitative process.<sup>24</sup>

### **Florida Contraband Forfeiture Act**

Sections 932.701-932.706, F.S., otherwise known as the "Florida Contraband Forfeiture Act," (Act), provides for the seizure and civil forfeiture of property that is initially taken related to criminal and non-criminal violations of law. Contraband articles may be seized when used during or for the purpose of violating the Act.<sup>25</sup>

Florida's policy is that law enforcement agencies must utilize the provisions of the Act to deter and prevent the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lienholders.<sup>26</sup> Law enforcement agencies are authorized to use the proceeds collected under the Act as supplemental funding for authorized purposes.<sup>27</sup> If the seizing agency is a county or municipal law enforcement agency, the remaining proceeds may be deposited into a special law enforcement trust fund to be used for:

- School resource officers;
- Crime prevention, safe neighborhood, drug abuse education, and prevention programs; or
- Other law enforcement purposes, including:

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<sup>21</sup> The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video.

<sup>22</sup> The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with the Senate Criminal Justice Committee).

<sup>23</sup> *Id.*

<sup>24</sup> DOC, *FDC Implements Research-Based Programming to Reduce Recidivism*, September 21, 2016, available at <http://www.dc.state.fl.us/secretary/press/2016/09-21-Recidivism.html> (last visited January 25, 2018).

<sup>25</sup> Section 932.702, F.S., provides that it is unlawful to: a. transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft; b. conceal or possess any contraband article; c. use any vessel, motor vehicle, aircraft, other personal property, or real property to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article, d. conceal, or possess, or use any contraband article as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the Act, and e. acquire real or personal property by the use of proceeds obtained in violation of the Act.

<sup>26</sup> Section 932.704(1), F.S.

<sup>27</sup> *Id.*

- Defraying the cost of protracted or complex investigations;
- Providing additional equipment or expertise;
- Purchasing automated external defibrillators for use in law enforcement vehicles; and
- Providing matching funds to obtain federal grants.<sup>28</sup>

Section 932.701, F.S., defines a contraband article to include items such as, but not limited to:

- Any controlled substance as defined in ch. 893, F.S., or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of ch. 893, F.S.;<sup>29</sup>
- Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state;
- Any personal property that was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Act;<sup>30</sup>
- Any real property that was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Act;<sup>31</sup> or
- Any real property that is, or any personal property in the possession of or belonging to any person which is, acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.<sup>32</sup>

### III. Effect of Proposed Changes:

#### Risk Assessment Pilot Program

The bill creates a Risk Assessment Pilot Program. The bill provides legislative findings for the program, specifically that the Legislature finds that:

- There is a need to use evidence-based methods to reduce recidivism.
- The use of actuarial instruments that classify offenders according to levels of risk to reoffend provides a more consistent and accurate assessment of an offender's risk and needs.
- Research indicates that using accurate risk and needs assessment instruments to identify appropriate interventions and programming for offenders reduces recidivism.

<sup>28</sup> Section 932.7055(5)(a), F.S., prohibits the proceeds and interest to be used to meet normal operating expenses of the law enforcement agency.

<sup>29</sup> Section 932.701(2)(a)1., F.S., requires that the totality of the facts presented by the state be clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.

<sup>30</sup> Section 932.701(2)(a)5., F.S., includes property such as any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency.

<sup>31</sup> Section 932.701(2)(a)6., F.S., includes real property such as any right, title, leasehold, or other interest in the whole of any lot or tract of land.

<sup>32</sup> Section 932.701(2)(a)11., F.S., includes real property such as any right, title, leasehold, or other interest in the whole of any lot or tract of land; and personal property that includes property such as equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind.

### ***Pilot Program Creation and Counties***

The bill creates a three-year pilot program, contingent upon appropriations and a contract with each participating county and the DOC. The bill provides that the counties eligible for participation include Hillsborough, Pasco, and Pinellas Counties. The sheriff from each participating county must enter into a contract<sup>33</sup> with the DOC to administer the RAI to all persons arrested for a felony in the participating county.

### ***Risk Assessment Instrument Criteria***

The bill requires the DOC to develop a RAI by March 1, 2019, for use in evaluating proper placement and programming needs for a person who is arrested. The RAI must consider at a minimum the following criteria:

- The nature and circumstances of the offense the person committed.
- The nature and extent of the person's prior criminal history, if any.
- Any prior history of the person failing to appear in court.
- The person's employment history, employability skills, and employment interests.
- The person's educational, vocational, and technical training.
- The person's background, including his or her family, home, and community environment.
- The person's physical and mental health history, including any substance use.
- An evaluation of the person's criminal thinking, criminal associates, and social awareness.

The DOC is authorized to utilize or modify an existing RAI if it contains the above-listed criteria.

### ***Implementation Requirements***

The bill authorizes the DOC to begin implementation of the RAI immediately upon completion, but requires implementation to be completed no later than June 30, 2019. The bill provides that implementation includes the training of all staff that will administer the risk assessment instrument.

### ***Administration of the Risk Assessment Instrument***

The bill provides that a representative of the county's chief correctional officer (sheriff) is to administer the RAI to a person as early as reasonably possible subsequent to the person's arrest, but no later than ten days after the arrest. The RAI may be conducted via video teleconference. In the event that a person is released from custody on pretrial release before the RAI has been administered, the sheriff or his or her representative must schedule a time for the person to come back to the jail to have the RAI administered. The person must be provided written notice of the appointment upon release.

Upon completion of a RAI report, the report must be provided to the:

- Person that had the RAI administered upon him or her;
- Defense counsel; and
- State attorney.

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<sup>33</sup> Contracts are awarded on a first-come, first-served basis up to the maximum appropriation allowable for this purpose.

The DOC is required to submit the report to the court, but the court may not review the report unless the person who is the subject of the report and his or her legal counsel agree.

### ***Pilot Program Requirements***

The bill requires the counties participating in the program to use the RAI as a tool for determining appropriate programming and sentencing with the goal of reducing recidivism. By July 1 of each year, each participating county must provide an annual report to the DOC detailing the results of the administration of the RAI, programming used for persons who received the RAI, and the success rate of such programming.

The DOC is required to compile the county reports and submit one annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program.

### ***Rulemaking Authority***

The bill provides rulemaking authority to the DOC to implement the act. The rules must be developed in consultation with the sheriff, chief judge, state attorney, and public defender of each participating county.

### **Charitable Bail Program**

The bill amends s. 932.701, F.S., defining “charitable bail fund” to mean a fund established and administered by a county or municipality which posts bail for indigent defendants.

The bill amends s. 932.7055, F.S., authorizing a county or municipal law enforcement agency to establish a charitable bail fund and to use the remaining proceeds of any contraband articles forfeited under the Act to establish and maintain such fund. Additionally, the bill provides that the question of the source of bail funds being derived from criminal or illicit activity is not to be considered in a court’s determination of whether to release a defendant on bond and, if so, the appropriate conditions of release, provided that such bail is posted through a charitable bail program as defined above.

The bill amends ss. 213.295, 893.147, and 932.703, F.S., to incorporate changes made by the act.

The bill is effective upon becoming law.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.



C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill creates a charitable bail program and allows proceeds forfeited under the Act to be used to post bail for indigent clients. To the extent that this provision results in persons being released from custody pending trial and thus being able to fulfill employment responsibilities with private entities, the bill may result in a positive impact to private businesses.

C. Government Sector Impact:

The bill allows counties to create a charitable bail program utilizing proceeds forfeited under the Act for the posting of indigent defendants' bail. To the extent that this results in fewer indigent persons being detained pending trial, the bill will likely result in a negative jail bed impact (i.e. reduction in the number of jail beds utilized) and a positive fiscal impact on the county as a result of fewer inmates.

Additionally, the bill creates a Risk Assessment Pilot Program that utilizes a RAI to ensure better programming for defendants after arrest. To the extent that this provision reduces recidivism, the bill may have a negative jail bed impact on both local governments and the DOC. However, there will also likely be costs associated with creating, implementing, and operating the Risk Assessment Pilot Program. The extent of these costs are indeterminate at this time.

The bill requires the DOC to create or modify a RAI for use with the Risk Assessment Pilot Program. This provision of the bill will likely result in an indeterminate negative fiscal impact to the DOC.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 210.095, 213.295, 893.147, 903.046, 932.701, 932.7055, and 932.703.

This bill creates section 907.042 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.

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

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