

By Senator Brandes

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1 A bill to be entitled
2 An act relating to persons awaiting trial; amending s.
3 903.046, F.S.; providing that a court is not required
4 to consider the source of funds used to post bail or
5 procure an appearance bond when determining whether to
6 release a defendant on bail or other conditions when
7 such funds are provided by a charitable bail fund;
8 creating s. 907.042, F.S.; providing legislative
9 findings; requiring the Department of Corrections to
10 develop a risk assessment instrument; authorizing the
11 department to use or modify an existing risk
12 assessment instrument; requiring the department to
13 develop or modify the risk assessment instrument by a
14 certain date; specifying requirements for the use,
15 implementation, and distribution of the risk
16 assessment instrument; creating the Risk Assessment
17 Pilot Program for a specified period; specifying the
18 participating counties; requiring each participating
19 county's chief correctional officer to contract with
20 the department to administer the risk assessment
21 instrument for all persons arrested for felony
22 violations; requiring each participating county to
23 submit a report annually by a certain date to the
24 department with specified information; requiring the
25 department to compile the information of the findings
26 from the participating counties and submit an annual
27 report by a certain date to the Governor and the
28 Legislature; authorizing the department, in
29 consultation with specified persons, to adopt rules;

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30 reordering and amending s. 932.701, F.S.; defining the
31 term "charitable bail fund"; amending s. 932.7055,
32 F.S.; providing that certain proceeds from seized
33 property which are deposited in a special law
34 enforcement trust fund and interest from such proceeds
35 may be used to establish and maintain a charitable
36 bail fund, if such a bail fund is established by the
37 county or municipality; amending ss. 210.095, 213.295,
38 893.147, and 932.703, F.S.; conforming cross-
39 references; providing an effective date.

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41 Be It Enacted by the Legislature of the State of Florida:

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43 Section 1. Paragraph (f) of subsection (2) of section
44 903.046, Florida Statutes, is amended to read:

45 903.046 Purpose of and criteria for bail determination.—

46 (2) When determining whether to release a defendant on bail
47 or other conditions, and what that bail or those conditions may
48 be, the court shall consider:

49 (f) The source of funds used to post bail or procure an
50 appearance bond, particularly whether the proffered funds, real
51 property, property, or any proposed collateral or bond premium
52 may be linked to or derived from the crime alleged to have been
53 committed or from any other criminal or illicit activities. The
54 burden of establishing the noninvolvement in or nonderivation
55 from criminal or other illicit activity of such proffered funds,
56 real property, property, or any proposed collateral or bond
57 premium falls upon the defendant or other person proffering them
58 to obtain the defendant's release.

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This paragraph does not apply when the funds used to post the defendant's bail or procure an appearance bond are provided by a charitable bail fund, as defined in s. 932.701.

Section 2. Section 907.042, Florida Statutes, is created to read:

907.042 Risk Assessment Pilot Program.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that there is a need to use evidence-based methods to reduce recidivism. The Legislature finds that 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. The Legislature also finds that research indicates that using accurate risk and needs assessment instruments to identify appropriate interventions and programming for offenders reduces recidivism.

(2) RISK ASSESSMENT INSTRUMENT.—

(a) The Department of Corrections shall develop a risk assessment instrument that conducts a criminogenic assessment for use in evaluating the proper placement and programming needs for a person who is arrested. The risk assessment instrument must consider, but need not be limited to, the following criteria:

1. The nature and circumstances of the offense the person committed.

2. The nature and extent of the person's prior criminal history, if any.

3. Any prior history of the person failing to appear in court.

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88 4. The person's employment history, employability skills,
89 and employment interests.

90 5. The person's educational, vocational, and technical
91 training.

92 6. The person's background, including his or her family,
93 home, and community environment.

94 7. The person's physical and mental health history,
95 including any substance use.

96 8. An evaluation of the person's criminal thinking,
97 criminal associates, and social awareness.

98 (b) The Department of Corrections may use or modify an
99 existing risk assessment instrument, if the instrument contains
100 the criteria enumerated in paragraph (a).

101 (c) The Department of Corrections shall complete the
102 development or modification of a risk assessment instrument no
103 later than March 1, 2019. The department may begin to implement
104 the risk assessment instrument immediately upon completion.
105 Implementation, including training all staff that will
106 administer the risk assessment instrument, must be completed by
107 June 30, 2019.

108 (d) A representative of the county's chief correctional
109 officer shall administer the risk assessment instrument as early
110 as reasonably possible after a person's arrest, but no later
111 than 10 business days after the arrest. If a person is released
112 from jail pursuant to chapter 903 before the administration of
113 the risk assessment instrument, the chief correctional officer,
114 or his or her representative, must schedule and provide written
115 notification of a date and time for the person to return to the
116 jail for the administration of the risk assessment instrument.

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117 The date and time must be provided in writing upon the person's
118 pretrial release. The risk assessment instrument may be
119 conducted by video teleconference.

120 (e) A risk assessment instrument report must be made
121 available to the person to whom the instrument is administered,
122 his or her legal counsel, and the state attorney upon completion
123 of the report. The Department of Corrections shall submit to the
124 court the risk assessment instrument report, but the court may
125 not review it without the consent of the person who is the
126 subject of the report and his or her legal counsel.

127 (3) CREATION.—Contingent upon appropriations and a contract
128 with each participating county, it is the intent of the
129 Legislature to establish a 3-year Risk Assessment Pilot Program
130 to perform a risk assessment evaluation on all persons arrested
131 for a felony in participating counties.

132 (4) PARTICIPATING COUNTIES.—Participation in the pilot
133 program is limited to Hillsborough, Pasco, and Pinellas
134 Counties. Each participating county's chief correctional officer
135 shall enter into a 3-year contract with the Department of
136 Corrections to administer risk assessments on all persons
137 arrested for a felony violation in the county. Contracts shall
138 be awarded on a first-come, first-served basis up to the maximum
139 appropriation allowable for this purpose.

140 (5) PILOT PROGRAM REQUIREMENTS.—

141 (a) The participating counties shall use the risk
142 assessment instrument as a tool for determining appropriate
143 programming and sentencing with the goal of reducing recidivism.

144 (b) Each county participating in the pilot program shall
145 provide an annual report to the Department of Corrections by

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146 July 1 of each year of the pilot program which details the
147 results of the administration of the risk assessment instrument,
148 programming used for persons who received the assessment, and
149 the success rate of such programming. The department shall
150 compile the county reports and submit one annual report to the
151 Governor, the President of the Senate, and the Speaker of the
152 House of Representatives by October 1 of each year of the pilot
153 program.

154 (6) RULEMAKING.—The Department of Corrections, in
155 consultation with a participating county's chief correctional
156 officer, chief judge, state attorney, and public defender, may
157 adopt rules to administer this section.

158 Section 3. Subsection (2) of section 932.701, Florida
159 Statutes, is amended to read:

160 932.701 Short title; definitions.—

161 (2) As used in the Florida Contraband Forfeiture Act, the
162 term:

163 (f)~~(a)~~ "Contraband article" means:

164 1. Any controlled substance as defined in chapter 893 or
165 any substance, device, paraphernalia, or currency or other means
166 of exchange that was used, was attempted to be used, or was
167 intended to be used in violation of any provision of chapter
168 893, if the totality of the facts presented by the state is
169 clearly sufficient to meet the state's burden of establishing
170 probable cause to believe that a nexus exists between the
171 article seized and the narcotics activity, whether or not the
172 use of the contraband article can be traced to a specific
173 narcotics transaction.

174 2. Any gambling paraphernalia, lottery tickets, money,

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175 currency, or other means of exchange which was used, was
176 attempted, or intended to be used in violation of the gambling
177 laws of the state.

178 3. Any equipment, liquid or solid, which was being used, is
179 being used, was attempted to be used, or intended to be used in
180 violation of the beverage or tobacco laws of the state.

181 4. Any motor fuel upon which the motor fuel tax has not
182 been paid as required by law.

183 5. Any personal property, including, but not limited to,
184 any vessel, aircraft, item, object, tool, substance, device,
185 weapon, machine, vehicle of any kind, money, securities, books,
186 records, research, negotiable instruments, or currency, which
187 was used or was attempted to be used as an instrumentality in
188 the commission of, or in aiding or abetting in the commission
189 of, any felony, whether or not comprising an element of the
190 felony, or which is acquired by proceeds obtained as a result of
191 a violation of the Florida Contraband Forfeiture Act.

192 6. Any real property, including any right, title,
193 leasehold, or other interest in the whole of any lot or tract of
194 land, which was used, is being used, or was attempted to be used
195 as an instrumentality in the commission of, or in aiding or
196 abetting in the commission of, any felony, or which is acquired
197 by proceeds obtained as a result of a violation of the Florida
198 Contraband Forfeiture Act.

199 7. Any personal property, including, but not limited to,
200 equipment, money, securities, books, records, research,
201 negotiable instruments, currency, or any vessel, aircraft, item,
202 object, tool, substance, device, weapon, machine, or vehicle of
203 any kind in the possession of or belonging to any person who

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204 takes aquaculture products in violation of s. 812.014(2)(c).

205 8. Any motor vehicle offered for sale in violation of s.
206 320.28.

207 9. Any motor vehicle used during the course of committing
208 an offense in violation of s. 322.34(9)(a).

209 10. Any photograph, film, or other recorded image,
210 including an image recorded on videotape, a compact disc,
211 digital tape, or fixed disk, that is recorded in violation of s.
212 810.145 and is possessed for the purpose of amusement,
213 entertainment, sexual arousal, gratification, or profit, or for
214 the purpose of degrading or abusing another person.

215 11. Any real property, including any right, title,
216 leasehold, or other interest in the whole of any lot or tract of
217 land, which is acquired by proceeds obtained as a result of
218 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
219 property, including, but not limited to, equipment, money,
220 securities, books, records, research, negotiable instruments, or
221 currency; or any vessel, aircraft, item, object, tool,
222 substance, device, weapon, machine, or vehicle of any kind in
223 the possession of or belonging to any person which is acquired
224 by proceeds obtained as a result of Medicaid fraud under s.
225 409.920 or s. 409.9201.

226 12. Any personal property, including, but not limited to,
227 any vehicle, item, object, tool, device, weapon, machine, money,
228 security, book, or record, that is used or attempted to be used
229 as an instrumentality in the commission of, or in aiding and
230 abetting in the commission of, a person's third or subsequent
231 violation of s. 509.144, whether or not comprising an element of
232 the offense.

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233 (b) "Bona fide lienholder" means the holder of a lien
234 perfected pursuant to applicable law.

235 (c) "Charitable bail fund" means a fund established and
236 administered by a county or municipality which posts bail for
237 indigent defendants.

238 (i)~~(e)~~ "Promptly proceed" means to file the complaint
239 within 45 days after seizure.

240 (e)~~(d)~~ "Complaint" is a petition for forfeiture filed in
241 the civil division of the circuit court by the seizing agency
242 requesting the court to issue a judgment of forfeiture.

243 (h)~~(e)~~ "Person entitled to notice" means any owner, entity,
244 bona fide lienholder, or person in possession of the property
245 subject to forfeiture when seized, who is known to the seizing
246 agency after a diligent search and inquiry.

247 (a)~~(f)~~ "Adversarial preliminary hearing" means a hearing in
248 which the seizing agency is required to establish probable cause
249 that the property subject to forfeiture was used in violation of
250 the Florida Contraband Forfeiture Act.

251 (g) "Forfeiture proceeding" means a hearing or trial in
252 which the court or jury determines whether the subject property
253 shall be forfeited.

254 (d)~~(h)~~ "Claimant" means any party who has proprietary
255 interest in property subject to forfeiture and has standing to
256 challenge such forfeiture, including owners, registered owners,
257 bona fide lienholders, and titleholders.

258 Section 4. Paragraph (a) of subsection (5) of section
259 932.7055, Florida Statutes, is amended to read:

260 932.7055 Disposition of liens and forfeited property.—

261 (5) (a) If the seizing agency is a county or municipal

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262 agency, the remaining proceeds shall be deposited in a special
263 law enforcement trust fund established by the board of county
264 commissioners or the governing body of the municipality. Such
265 proceeds and interest earned therefrom shall be used for school
266 resource officer, crime prevention, safe neighborhood, drug
267 abuse education and prevention programs; to establish and
268 maintain a charitable bail fund, if the county or municipality
269 establishes such a fund; or for other law enforcement purposes,
270 which include defraying the cost of protracted or complex
271 investigations, providing additional equipment or expertise,
272 purchasing automated external defibrillators for use in law
273 enforcement vehicles, and providing matching funds to obtain
274 federal grants. The proceeds and interest may not be used to
275 meet normal operating expenses of the law enforcement agency.

276 Section 5. Paragraph (f) of subsection (8) of section
277 210.095, Florida Statutes, is amended to read:

278 210.095 Mail order, Internet, and remote sales of tobacco
279 products; age verification.—

280 (8)

281 (f) Any fixture, equipment, or other material or personal
282 property on the premises of any person who, with the intent to
283 defraud this state, mails or ships tobacco products into this
284 state and fails to satisfy any of the requirements of this
285 section is a contraband article as defined in s. 932.701 ~~within~~
286 ~~the definition of s. 932.701(2)(a)3.~~

287 Section 6. Subsection (4) of section 213.295, Florida
288 Statutes, is amended to read:

289 213.295 Automated sales suppression devices.—

290 (4) An automated sales suppression device, a zapper,

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291 phantom-ware, or any device containing such device or software
292 is a contraband article as defined in s. 932.701 ~~provided in s.~~
293 ~~932.701(2)(a)~~ and may be seized and forfeited pursuant to the
294 Florida Contraband Forfeiture Act.

295 Section 7. Subsection (4) of section 893.147, Florida
296 Statutes, is amended to read:

297 893.147 Use, possession, manufacture, delivery,
298 transportation, advertisement, or retail sale of drug
299 paraphernalia.—

300 (4) TRANSPORTATION OF DRUG PARAPHERNALIA.—It is unlawful to
301 use, possess with the intent to use, or manufacture with the
302 intent to use drug paraphernalia, knowing or under circumstances
303 in which one reasonably should know that it will be used to
304 transport:

305 (a) A controlled substance in violation of this chapter; or

306 (b) Contraband as defined in s. 932.701(2)(f)1. ~~s.~~
307 ~~932.701(2)(a)1.~~

308
309 Any person who violates this subsection commits a felony of the
310 third degree, punishable as provided in s. 775.082, s. 775.083,
311 or s. 775.084.

312 Section 8. Subsection (5) of section 932.703, Florida
313 Statutes, is amended to read:

314 932.703 Forfeiture of contraband article; exceptions.—

315 (5) In any incident in which possession of any contraband
316 article defined in s. 932.701 ~~s. 932.701(2)(a)~~ constitutes a
317 felony, the vessel, motor vehicle, aircraft, other personal
318 property, or real property in or on which such contraband
319 article is located at the time of seizure shall be contraband

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320 subject to forfeiture. It shall be presumed in the manner
321 provided in s. 90.302(2) that the vessel, motor vehicle,
322 aircraft, other personal property, or real property in which or
323 on which such contraband article is located at the time of
324 seizure is being used or was attempted or intended to be used in
325 a manner to facilitate the transportation, carriage, conveyance,
326 concealment, receipt, possession, purchase, sale, barter,
327 exchange, or giving away of a contraband article defined in s.
328 932.701(2).

329 Section 9. This act shall take effect upon becoming a law.