

By Senator Bracy

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1 A bill to be entitled
2 An act relating to determining bail; amending s.
3 903.046, F.S.; revising the purpose of a bail
4 determination; creating a presumption that individuals
5 arrested for allegedly committing nonviolent
6 misdemeanors be released on nonmonetary conditions or
7 nonmonetary restrictions; defining the term
8 "nonviolent misdemeanor"; restricting the
9 determinations a court must consider for bail or other
10 conditions for persons committing crimes other than
11 nonviolent misdemeanor offenses; amending s. 903.0471,
12 F.S.; authorizing a court to revoke pretrial release
13 and order pretrial detention if the court finds
14 probable cause to believe that the defendant committed
15 a new violent crime or a new dangerous crime while on
16 pretrial release; amending s. 907.041, F.S.; revising
17 legislative intent; making technical changes; amending
18 s. 790.065, F.S.; conforming a cross-reference;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 903.046, Florida Statutes, is amended to
24 read:

25 903.046 Purpose of, presumption in, and criteria for bail
26 determination.—

27 (1) The purpose of a bail determination in criminal
28 proceedings is to ensure the appearance of a violent ~~the~~
29 criminal defendant at subsequent proceedings and to protect the

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30 community against ~~unreasonable~~ danger from the violent criminal
31 defendant.

32 (2) There is a presumption that an individual arrested for
33 allegedly committing a nonviolent misdemeanor crime will be
34 released on nonmonetary conditions or nonmonetary restrictions
35 while he or she awaits trial. As used in this subsection, the
36 term "nonviolent misdemeanor" excludes assault as defined in s.
37 784.011.

38 (3)~~(2)~~ For an individual who is alleged to have committed a
39 crime not included in subsection (2), when determining whether
40 to release a defendant on bail or other conditions, and what
41 that bail or those conditions may be, the court shall consider:

42 (a) The nature and circumstances of the offense charged.

43 (b) The weight of the evidence against the defendant.

44 (c) The defendant's family ties, length of residence in the
45 community, employment history, financial resources, and mental
46 condition.

47 (d) The defendant's past and present conduct, including any
48 record of convictions, previous flight to avoid prosecution, or
49 failure to appear at court proceedings. However, any defendant
50 who had failed to appear on the day of any required court
51 proceeding in the case at issue, but who had later voluntarily
52 appeared or surrendered, shall not be eligible for a
53 recognizance bond; and any defendant who failed to appear on the
54 day of any required court proceeding in the case at issue and
55 who was later arrested shall not be eligible for a recognizance
56 bond or for any form of bond which does not require a monetary
57 undertaking or commitment equal to or greater than \$2,000 or
58 twice the value of the monetary commitment or undertaking of the

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59 original bond, whichever is greater. Notwithstanding anything in
60 this section, the court has discretion in determining conditions
61 of release if the defendant proves circumstances beyond his or
62 her control for the failure to appear. This section may not be
63 construed as imposing additional duties or obligations on a
64 governmental entity related to monetary bonds.

65 (e) The nature and probability of danger which the
66 defendant's release poses to the community.

67 (f) The source of funds used to post bail or procure an
68 appearance bond, particularly whether the proffered funds, real
69 property, property, or any proposed collateral or bond premium
70 may be linked to or derived from the crime alleged to have been
71 committed or from any other criminal or illicit activities. The
72 burden of establishing the noninvolvement in or nonderivation
73 from criminal or other illicit activity of such proffered funds,
74 real property, property, or any proposed collateral or bond
75 premium falls upon the defendant or other person proffering them
76 to obtain the defendant's release.

77 (g) Whether the defendant is already on release pending
78 resolution of another criminal proceeding or on probation,
79 parole, or other release pending completion of a sentence.

80 (h) The street value of any drug or controlled substance
81 connected to or involved in the criminal charge. It is the
82 finding and intent of the Legislature that crimes involving
83 drugs and other controlled substances are of serious social
84 concern, that the flight of defendants to avoid prosecution is
85 of similar serious social concern, and that frequently such
86 defendants are able to post monetary bail using the proceeds of
87 their unlawful enterprises to defeat the social utility of

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88 pretrial bail. Therefore, the courts should carefully consider
89 the utility and necessity of substantial bail in relation to the
90 street value of the drugs or controlled substances involved.

91 (i) The nature and probability of intimidation and danger
92 to victims.

93 (j) Whether there is probable cause to believe that the
94 defendant committed a new crime while on pretrial release.

95 (k) Any other facts that the court considers relevant.

96 (l) Whether the crime charged is a violation of chapter 874
97 or alleged to be subject to enhanced punishment under chapter
98 874 or reclassification under s. 843.22. If any such violation
99 is charged against a defendant or if the defendant is charged
100 with a crime that is alleged to be subject to such enhancement
101 or reclassification, he or she is not eligible for release on
102 bail or surety bond until the first appearance on the case in
103 order to ensure the full participation of the prosecutor and the
104 protection of the public.

105 (m) Whether the defendant, other than a defendant whose
106 only criminal charge is a misdemeanor offense under chapter 316,
107 is required to register as a sexual offender under s. 943.0435
108 or a sexual predator under s. 775.21; and, if so, he or she is
109 not eligible for release on bail or surety bond until the first
110 appearance on the case in order to ensure the full participation
111 of the prosecutor and the protection of the public.

112 Section 2. Section 903.0471, Florida Statutes, is amended
113 to read:

114 903.0471 Violation of condition of pretrial release.—
115 ~~Notwithstanding s. 907.041,~~ A court may, on its own motion,
116 revoke pretrial release and order pretrial detention if the

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117 court finds probable cause to believe that the defendant
118 committed a new violent crime or a new dangerous crime, as
119 defined in s. 907.041, while on pretrial release.

120 Section 3. Subsection (1), paragraph (a) of subsection (3),
121 and paragraphs (a), (b), and (c) of subsection (4) of section
122 907.041, Florida Statutes, are amended to read:

123 907.041 Pretrial detention and release.—

124 (1) LEGISLATIVE INTENT.—It is the policy of this state that
125 persons committing violent or serious criminal offenses, posing
126 a threat to the safety of the community or the integrity of the
127 judicial process, or failing to appear at trial be detained upon
128 arrest. However, persons committing nonviolent misdemeanor
129 offenses and not posing a threat to the safety of the community
130 ~~found to meet specified criteria shall be released under certain~~
131 ~~conditions until proceedings are concluded and adjudication has~~
132 ~~been determined.~~ The Legislature finds that this policy of
133 pretrial detention and release will assure the detention of
134 those persons posing a threat to society while reducing the
135 costs for incarceration by releasing, until trial, those persons
136 not considered a danger to the community ~~who meet certain~~
137 ~~criteria.~~ It is the intent of the Legislature that the primary
138 consideration for detaining an individual is whether the
139 individual presents a ~~be the protection of the community from~~
140 ~~risk of physical harm to persons.~~

141 (3) RELEASE ON NONMONETARY CONDITIONS.—

142 (a) It is the intent of the Legislature that individuals
143 arrested for nonviolent misdemeanors who do not pose a threat to
144 the safety of the community shall be released ~~to create a~~
145 ~~presumption in favor of release~~ on nonmonetary conditions while

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146 ~~they await trial for any person who is granted pretrial release~~
147 ~~unless such person is charged with a dangerous crime as defined~~
148 ~~in subsection (4). Such person shall be released on monetary~~
149 ~~conditions if it is determined that such monetary conditions are~~
150 ~~necessary to assure the presence of the person at trial or at~~
151 ~~other proceedings, to protect the community from risk of~~
152 ~~physical harm to persons, to assure the presence of the accused~~
153 ~~at trial, or to assure the integrity of the judicial process.~~

154 (4) PRETRIAL DETENTION.—

155 (a) A person charged with a dangerous crime, as defined in
156 paragraph (b), may not be granted pretrial release at a first
157 appearance hearing; however, the court may release the accused
158 person on electronic monitoring or on recognizance bond if the
159 findings on the record of facts and circumstances warrant such a
160 release.

161 (b) As used in this subsection, "dangerous crime" means any
162 of the following:

- 163 1. Arson;
- 164 2. Aggravated assault;
- 165 3. Aggravated battery;
- 166 4. Illegal use of explosives;
- 167 5. Child abuse or aggravated child abuse;
- 168 6. Abuse of an elderly person or disabled adult, or
- 169 aggravated abuse of an elderly person or disabled adult;
- 170 7. Aircraft piracy;
- 171 8. Kidnapping;
- 172 9. Homicide;
- 173 10. Manslaughter;
- 174 11. Sexual battery;

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- 175 12. Robbery;
- 176 13. Carjacking;
- 177 14. Lewd, lascivious, or indecent assault or act upon or in
178 presence of a child under the age of 16 years;
- 179 15. Sexual activity with a child, who is 12 years of age or
180 older but less than 18 years of age, by or at solicitation of
181 person in familial or custodial authority;
- 182 16. Burglary of a dwelling;
- 183 17. Stalking and aggravated stalking;
- 184 18. Act of domestic violence as defined in s. 741.28;
- 185 19. Home invasion robbery;
- 186 20. Act of terrorism as defined in s. 775.30;
- 187 21. Manufacturing any substances in violation of chapter
188 893;
- 189 22. Attempting or conspiring to commit any such crime; and
- 190 23. Human trafficking.
- 191 ~~(b) No person charged with a dangerous crime shall be~~
192 ~~granted nonmonetary pretrial release at a first appearance~~
193 ~~hearing; however, the court shall retain the discretion to~~
194 ~~release an accused on electronic monitoring or on recognizance~~
195 ~~bond if the findings on the record of facts and circumstances~~
196 ~~warrant such a release.~~
- 197 (c) The court may order pretrial detention if it finds a
198 substantial probability, based on a defendant's past and present
199 patterns of behavior, the criteria in s. 903.046, and any other
200 relevant facts, that any of the following circumstances exist:
- 201 1. The defendant has previously violated conditions of
202 release and that no further conditions of release are reasonably
203 likely to assure the defendant's appearance at subsequent

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204 proceedings;

205 2. The defendant, with the intent to obstruct the judicial
206 process, has threatened, intimidated, or injured any victim,
207 potential witness, juror, or judicial officer, or has attempted
208 or conspired to do so, and that no condition of release will
209 reasonably prevent the obstruction of the judicial process;

210 3. The defendant is charged with trafficking in controlled
211 substances as defined by s. 893.135, that there is a substantial
212 probability that the defendant has committed the offense, and
213 that no conditions of release will reasonably assure the
214 defendant's appearance at subsequent criminal proceedings;

215 4. The defendant is charged with DUI manslaughter, as
216 defined by s. 316.193, and that there is a substantial
217 probability that the defendant committed the crime and that the
218 defendant poses a threat of harm to the community; a condition
219 ~~conditions~~ that would support a finding by the court pursuant to
220 this subparagraph that the defendant poses a threat of harm to
221 the community is if include, ~~but are not limited to,~~ any of the
222 following:

223 ~~a.~~ the defendant has previously been convicted of any crime
224 under s. 316.193, or of any crime in any other state or
225 territory of the United States that is substantially similar to
226 any crime under s. 316.193;

227 ~~b.~~ The defendant was driving with a suspended driver
228 license when the charged crime was committed; or

229 ~~c.~~ The defendant has previously been found guilty of, or
230 has had adjudication of guilt withheld for, driving while the
231 defendant's driver license was suspended or revoked in violation
232 of s. 322.34;

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233 5. The defendant poses the threat of harm to the community.
234 The court may so conclude, if it finds that the defendant is
235 presently charged with a dangerous crime as defined in paragraph
236 (b), that there is a substantial probability that the defendant
237 committed such crime, that the factual circumstances of the
238 crime indicate a disregard for the safety of the community, and
239 that there are no conditions of release reasonably sufficient to
240 protect the community from the risk of physical harm to persons;

241 6. The defendant was on probation, parole, or other release
242 pending completion of sentence or on pretrial release for a
243 dangerous crime at the time the current offense was committed;

244 7. The defendant has violated one or more conditions of
245 pretrial release or bond for the offense currently before the
246 court and the violation, in the discretion of the court,
247 supports a finding that no conditions of release can reasonably
248 protect the community from risk of physical harm to persons or
249 assure the presence of the accused at trial; or

250 8.a. The defendant has ever been sentenced pursuant to s.
251 775.082(9) or s. 775.084 as a prison releasee reoffender,
252 habitual violent felony offender, three-time violent felony
253 offender, or violent career criminal, or the state attorney
254 files a notice seeking that the defendant be sentenced pursuant
255 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
256 habitual violent felony offender, three-time violent felony
257 offender, or violent career criminal;

258 b. There is a substantial probability that the defendant
259 committed the offense; and

260 c. There are no conditions of release that can reasonably
261 protect the community from risk of physical harm or ensure the

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262 presence of the accused at trial.

263 Section 4. Paragraph (c) of subsection (2) of section
 264 790.065, Florida Statutes, is amended to read:

265 790.065 Sale and delivery of firearms.—

266 (2) Upon receipt of a request for a criminal history record
 267 check, the Department of Law Enforcement shall, during the
 268 licensee’s call or by return call, forthwith:

269 (c)1. Review any records available to it to determine
 270 whether the potential buyer or transferee has been indicted or
 271 has had an information filed against her or him for an offense
 272 that is a felony under either state or federal law, or, as
 273 mandated by federal law, has had an injunction for protection
 274 against domestic violence entered against the potential buyer or
 275 transferee under s. 741.30, has had an injunction for protection
 276 against repeat violence entered against the potential buyer or
 277 transferee under s. 784.046, or has been arrested for a
 278 dangerous crime as specified in s. 907.041(4)(b) ~~s.~~

279 ~~907.041(4)(a)~~ or for any of the following enumerated offenses:

- 280 a. Criminal anarchy under ss. 876.01 and 876.02.
- 281 b. Extortion under s. 836.05.
- 282 c. Explosives violations under s. 552.22(1) and (2).
- 283 d. Controlled substances violations under chapter 893.
- 284 e. Resisting an officer with violence under s. 843.01.
- 285 f. Weapons and firearms violations under this chapter.
- 286 g. Treason under s. 876.32.
- 287 h. Assisting self-murder under s. 782.08.
- 288 i. Sabotage under s. 876.38.
- 289 j. Stalking or aggravated stalking under s. 784.048.

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291 If the review indicates any such indictment, information, or
292 arrest, the department shall provide to the licensee a
293 conditional nonapproval number.

294 2. Within 24 working hours, the department shall determine
295 the disposition of the indictment, information, or arrest and
296 inform the licensee as to whether the potential buyer is
297 prohibited from receiving or possessing a firearm. For purposes
298 of this paragraph, "working hours" means the hours from 8 a.m.
299 to 5 p.m. Monday through Friday, excluding legal holidays.

300 3. The office of the clerk of court, at no charge to the
301 department, shall respond to any department request for data on
302 the disposition of the indictment, information, or arrest as
303 soon as possible, but in no event later than 8 working hours.

304 4. The department shall determine as quickly as possible
305 within the allotted time period whether the potential buyer is
306 prohibited from receiving or possessing a firearm.

307 5. If the potential buyer is not so prohibited, or if the
308 department cannot determine the disposition information within
309 the allotted time period, the department shall provide the
310 licensee with a conditional approval number.

311 6. If the buyer is so prohibited, the conditional
312 nonapproval number shall become a nonapproval number.

313 7. The department shall continue its attempts to obtain the
314 disposition information and may retain a record of all approval
315 numbers granted without sufficient disposition information. If
316 the department later obtains disposition information which
317 indicates:

318 a. That the potential buyer is not prohibited from owning a
319 firearm, it shall treat the record of the transaction in

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320 accordance with this section; or

321 b. That the potential buyer is prohibited from owning a
322 firearm, it shall immediately revoke the conditional approval
323 number and notify local law enforcement.

324 8. During the time that disposition of the indictment,
325 information, or arrest is pending and until the department is
326 notified by the potential buyer that there has been a final
327 disposition of the indictment, information, or arrest, the
328 conditional nonapproval number shall remain in effect.

329 Section 5. This act shall take effect July 1, 2018.