

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill requires pretrial release programs to maintain a register on a weekly basis that details information about the program at the office of the clerk of the circuit court in the county where the program is located. The bill also requires pretrial services programs to submit annual reports to the Office of the State Court Administrator and the clerks of court of each county in which the programs are located.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 903, F.S. regulates bail and bond procedures. There are three ways a defendant can gain release from jail prior to the conclusion of a criminal case: the defendant can be released on their own recognizance, which does not require any money be posted; the defendant may be required to post a cash bond¹; or the defendant would have the option to post a surety bond² through the services of a bail bondsman. The bond amount is set by a judge, either during first appearance or by a warrant. The bond amount is based on the nature and circumstance of the criminal offense, the weight of the evidence against the defendant, the defendant's ties to the community, the defendant's prior conduct, whether the defendant is a danger to the community, whether the defendant is already on release for another criminal offense, the source of fund used to post bail, the street value of a controlled substance connected to the criminal case if the offense involved drugs, the probability of intimidation to victims, and any other facts the court deems relevant.³

Proposed Changes

Pretrial Release Programs

The bill defines a "pretrial release program" to mean an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants. The bill requires pretrial release programs

¹ To post a cash bond, a defendant deposits the entire amount of the bail with the clerk of the court. If the defendant makes all court appearances, the defendant is refunded the entire amount of the bond, minus any monies that are withheld by the clerk of the court to pay court expenses, fees, fines, etc.

² To post a surety bond, a defendant would obtain the services of a bail bondsman, who typically charge a defendant a fee of 10% of the bond amount, with the bondsman paying the total bail amount to the clerk of the court and acting as a guarantor of the defendant's presence at all court appearances. The defendant does not receive a refund of the 10% upon conclusion of the criminal case. The bondsman retains the 10% as a fee for services. Court costs, fees, and fines may not be withheld from a surety bond.

³ Section 903.046, F.S.

to prepare a register⁴ containing various information about the defendants released to the program. The register must be updated weekly and must be located in the office of the clerk of the circuit court in the county in which the program is located. The register must provide the following information:

- the name, location, and funding source of the pretrial services program
- the number of defendants assessed for pretrial release
- the number of indigent defendants interviewed for pretrial release
- the names and number of defendants accepted into the program
- the names and number of indigent defendants accepted into the program
- the charges filed against the defendants accepted into the program
- the nature of any prior criminal convictions of any defendant accepted into the program
- the court appearances required of defendants accepted into the program
- the date of each instance in which a defendant accepted into the program fails to appear for a scheduled court appearance
- the number of warrants which have been issued for a defendant's failure to appear at a scheduled court appearance
- the number and type of program noncompliance committed by a defendant in the program and whether the program recommended the court to revoke the defendant's release

The bill provides that no later than March 31 of each year, each pretrial services program must submit an annual report to the Office of the State Court Administrator and to the clerk of the circuit court in the county where the program is located containing the following information:

- the name, location, and funding sources of the pretrial release program, including the amount of public funds the program receives
- the operating and capital budget of each program that receives public funds
- the percentage of the program's total budget that is publicly funded
- the number of persons employed by each program
- the number of defendants assessed for pretrial release
- the number of defendants recommended for pretrial release
- the number of defendants for whom the pretrial release program recommended against nonsecured release
- the number of defendant granted nonsecured release after the program recommended nonsecured release⁵

⁴ The bill defines a "register" to mean a public record prepared by a pretrial release program which furnishes specified data and is readily available to the public at the office of the clerk of the circuit court.

⁵ The bill defines "nonsecured release" to mean the release of a defendant from pretrial custody when no secured surety or cash bond is required as a condition of the release.

- the number of defendants assessed for pretrial release who were declared indigent by the court
- the name and case number of each person granted nonsecured release who failed to attend a scheduled court appearance, who had a warrant issued for failure to appear, or were arrested for a new criminal offense while on release to a pretrial release program
- the percentage of the program's budget allocated to assisting a defendant's release through nonpublic funding
- the amount of fees paid by defendants to the program
- any additional information deemed necessary by the chief judge of the circuit or the Office of the State Court Administrator

The bill provides that if the chief judge of the circuit court finds the pretrial release program has not maintained the register or filed the annual report, the chief judge shall order the pretrial release program to prepare a written report explaining the noncompliance and proposing remedial measures. For a second or subsequent finding of noncompliance, the chief judge must order the pretrial services program to show why it should not be held in contempt for continued noncompliance. If the pretrial release program is found in contempt of court, the chief judge has the discretion to order the pretrial release program to reduce its budget by 25% if the program receives public funds, and may immediately cancel any contract with a private pretrial release program.

General Bail Provisions

The bill provides that any monetary component of pretrial release may be met by a surety bond. This would prevent judges from requiring a defendant to post a cash bond in certain circumstances. For example, for contempt of court for failure to pay court costs, a judge could set a bond amount equal to the amount of the court costs owed. Since clerks of the court may withhold any and all of a cash bond to pay court costs, fees, and fines, a defendant would essentially be required to pay court costs to get out of jail. The bill also provides that a judge may not set different amounts for cash bonds, surety bonds, and other forms of pretrial release. For example, some judges require defendants who are active duty military post either a bond, or be released on their own recognizance to an officer. The bill would seem to prohibit such an arrangement. Additionally, if a judge set a cash bond amount that was 10% of the surety bond amount, there would be no financial incentive for a defendant to post a surety bond.

Withholding of Cash Bonds

Currently, upon the disposition of a criminal case, the clerk of the court may withhold any portion of a cash bond posted by any person other than a licensed bail bond agent to pay court fees, court costs, and criminal penalties.⁶ The cash bond may be forfeited and withheld regardless of who posts the bond. In some circumstances, a person other than the defendant, such as an employer, friend, etc., may post a cash bond for the defendant. In such circumstances, the bond is still subject to withholding and forfeiture by the clerk of the court.

The new cash bond forms required by the bill would be required to prominently display a notice explaining the cash bond is subject to forfeiture and withholding by the clerk of the court for the

⁶ Section 903.286, F.S.

payment of court fees, court costs, and criminal penalties. The notice must state that the cash bond is subject to forfeiture and withholding regardless of who posted the bond.

C. SECTION DIRECTORY:

Section 1 Creates s. 907.043, F.S., relating to pretrial release.

Section 2 Amends s. 903.09, F.S., relating to bail and bonds.

Section 3 Amends s. 903.09, F.S., relating to the justification of sureties.

Section 4 Amends s. 903.286, F.S., relating to the return of cash bonds; requirements to withhold unpaid fines, fees, and court costs.

Section 5 Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures: Indeterminate

The bill requires the chief judge to evaluate the compliance of the pretrial release programs with the provisions of this bill. The bill provides the chief judge with the authority to reduce the budget of a pretrial release program for repeated noncompliance with record keeping requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures: Indeterminate

- Most pretrial release programs are funded by local entities such as counties and sheriff's offices. The pretrial release programs would be responsible for maintaining the register on a weekly basis, and also would have to compile annual reports. The clerk of the circuit court would be required to keep the register and make it available to the public.
- If the budgets of the pretrial release programs are impacted, either by the cost of reporting data or by a reduction for noncompliance with the reporting requirements, the programs may not have the ability to supervise as many defendants. As a result, some defendants may be required to post bail instead of being released to the program on their own recognizance or with a lower bail amount. This would have the effect of increasing the number of defendants who would remain in county jails prior to the disposition of their criminal case.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase the number of defendants who choose to post bail through a bail bonds agency since the bill eliminates judges' ability to set different bond amounts for cash and surety bonds, and also since the bill provides that any monetary condition may be satisfied by a surety bond.

D. FISCAL COMMENTS:

According to the Department of Corrections (DOC), if the bill intends to include DOC officers who conduct bond investigations within the terms of the bill, it will have a significant impact on community corrections due to the extensive reporting requirements and data collection required.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Section 907.043(4)(c) and s. 907.043(4)(d), F.S. contain additional information the pretrial release programs must be submit in their annual report. These two subsections should be moved into the list of information that must be in the annual report under s. 907.043(4)(b), F.S.
- Section 903.09, F.S. is entitled "Justification of Sureties." The language added by the bill adds an additional requirement for cash bonds. The title of that section should be changed to reflect that it will also relate to cash bonds.
- The bill requires the chief judge to reduce the budget of a pretrial release program that is not in compliance with the reporting requirements. Most pretrial release programs receive their funding from counties, cities, and sheriff's offices, so it is unlikely the chief judge would have the authority to reduce the budget of the programs.
- The Department of Corrections is unclear whether officers who conduct bond investigations, make recommendations to the court concerning pretrial release, and who continue supervising a person once released to a program would be required to gather and report data required by the bill.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES