

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 445 Pretrial Detention and Release

SPONSOR(S): Dorworth

TIED BILLS: IDEN./SIM. BILLS: SB 494, SB 782

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|-----------|------------|----------------|
| 1) | Public Safety & Domestic Security Policy Committee | 13 Y, 0 N | Cunningham | Cunningham |
| 2) | Criminal & Civil Justice Appropriations Committee | | McAuliffe | Davis |
| 3) | Criminal & Civil Justice Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

The bill creates s. 907.041(5), F.S., to establish eligibility criteria that will apply to all pretrial release programs. There are currently no pretrial release program eligibility criteria in the Florida Statutes – each county develops its own. The bill specifies that a defendant is only eligible to participate in a pretrial release program if the defendant is charged with a misdemeanor or with a felony that is not a dangerous crime and:

- Has no history of failing to appear at any court proceeding;
- Is not, at the time of the arrest, subject to or on probation for another charge and is not facing charges for another crime anywhere in this state;
- Has no prior convictions involving violence;
- Satisfies any other limitation upon eligibility for release which is in addition to those above, whether established by the board of county commissioners or the court; and
- Is indigent as defined in Rule 3.111, Florida Rules of Criminal Procedure.

The bill requires the court to determine whether a defendant is eligible to participate in a pretrial release program and requires pretrial release programs to certify in writing that the defendant satisfies each of the above requirements. The bill also requires pretrial release programs to notify every defendant released to the program of the times and places at which the defendant is required to appear before the court.

The bill also specifies that if a defendant seeks to post a surety bond, the defendant must do so without any interaction with, or restriction by, a pretrial release program.

The bill prohibits pretrial release programs from charging defendants any fee or charge other than those authorized by state law.

The bill may have a significant fiscal impact on local government. See "Fiscal Comments."

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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 Pretrial release is a constitutional right for most people arrested for a crime.² The primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether the person threatens the integrity of the judicial process.³

Types of Pretrial Release

Generally, pretrial release can be granted in one of the following three ways:⁴

Release on Own Recognizance

Release on own recognizance allows defendants to be released from jail based on their promise to return for mandatory court appearances.⁵ Defendants released on recognizance are not required to post a bond and are not supervised.

Bond

Posting bond is a monetary requirement to ensure that defendants appear in court when required. A defendant whom the court approves for this release must post a cash bond to the court or arrange for a surety bond through a private bondsman. Defendants typically pay a nonrefundable fee to the bondsman of 10% of the bond required by the court for release. If the defendant does not appear, the bondsman is responsible for paying the entire amount. As such, bondsmen have a vested interest in ensuring that their clients attend their court dates and do not abscond. Bondsmen are not required to supervise a defendant.

¹ Report No. 10-08, "Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed," Office of Program Policy Analysis & Government Accountability, January 2010.

² Article I, Section 14, *Florida Constitution*, provides that unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

³ *Id.* See also, s. 907.041(1), F.S.

⁴ Report No. 10-08, "Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed," Office of Program Policy Analysis & Government Accountability, January 2010.

⁵ Some defendants can also be released at the time of arrest with a notice to appear in court.

Pretrial Release Programs

Pretrial release programs⁶ actively supervise approved defendants. The programs do so through phone contacts, visits, and/or electronic monitoring until the defendant's case is disposed or until the defendant's supervision is revoked. Defendants generally are released into a pretrial release program without paying a bond. Defendants may be assigned to the program by a judge or selected for participation by the program. There are no pretrial release program eligibility criteria in the Florida Statutes – each county develops its own criteria for determining who is eligible for its pretrial release program.

Prior to a defendant being released to a pretrial release program, the program must certify to the court that it has investigated or otherwise verified:

- The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;
- The accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings; and
- Other facts necessary to assist the court in its determination of the indigency of the accused and whether the accused should be released under the supervision of the program.⁷

According to a January 2010, report by the Office of Program Policy Analysis and Government Accountability (OPPAGA), Florida has 28 pretrial release programs, which are administered on a county basis by sheriffs, jails, or county government divisions. Pretrial release programs are primarily funded by the county and by fees charged to defendants who participate in the program.⁸

Presumption in Favor of Non-Monetary Release

The Legislature has established a presumption in favor of pretrial release on *nonmonetary conditions*. Section 907.041(3)(a), F.S., provides the following:

It is the intent of the Legislature to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime as defined in subsection (4).⁹ Such person shall be released on monetary conditions if it is determined that such monetary conditions are necessary to assure the presence of the person at trial or at other proceedings, to protect the community from risk of physical harm to persons, to assure the presence of the accused at trial, or to assure the integrity of the judicial process.

Effectiveness of the Three Types of Pretrial Release

As noted above, the primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether

⁶ Section 907.043(2)(b), F.S., defines the term "pretrial release program" as 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 term does not apply to any program in the Florida Department of Corrections. *See s. 907.043(2)(b), F.S.*

⁷ s. 907.041(3)(b), F.S.

⁸ Osceola county's pretrial release program is permitted to charge participating defendants a \$2.70 fee per day for electronic monitoring, a \$4.90 fee per day for GPS, a \$4.75 fee for an alcohol monitoring device, a \$30.80 fee for a drug test, and a \$13.20 fee for an alcohol test. *See "Osceola County Corrections Department Proposed Legislation Impact Analysis" for House Bill 445.*

⁹ Section 907.041(4), F.S., defines the term "dangerous crime" to include arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking or aggravated stalking; act of domestic violence; home invasion robbery; act of terrorism; manufacturing any substances in violation of ch. 893; and attempting or conspiring to commit any of the aforementioned crimes.

the person threatens the integrity of the judicial process. In their January 2010 report, OPPAGA reviewed Miami-Dade county's 2008 data and reported that failure to appear rates were comparable for each of the different types of pretrial release, with defendants in pretrial release programs being slightly more likely to fail to appear than those released on bond or released on their own recognizance.¹⁰ OPPAGA also found that Florida's pretrial release programs were following nationally recognized best practices for supervising defendants and reporting information to the courts.¹¹

Effect of the Bill

As noted above, there are currently no pretrial release program eligibility criteria in the Florida Statutes. Instead, each county develops its own criteria for determining who is eligible for its pretrial release program. The bill creates s. 907.041(5), F.S., to establish pretrial release program eligibility criteria that will apply to each county's pretrial release programs. The bill specifies that a defendant is only eligible to participate in a pretrial release program if the defendant is charged with a misdemeanor or with a felony that is not a dangerous crime and:

- Has no history of failing to appear at any court proceeding;
- Is not, at the time of the arrest, subject to or on probation for another charge and is not facing charges for another crime anywhere in this state;
- Has no prior convictions involving violence;
- Satisfies any other limitation upon eligibility for release which is in addition to those above, whether established by the board of county commissioners or the court; and
- Is indigent as defined in Rule 3.111, Florida Rules of Criminal Procedure.¹²

The bill requires the court to determine whether a defendant is eligible to participate in a pretrial release program and requires pretrial release programs to certify in writing to the court that the defendant satisfies each of the above requirements before a determination is made concerning the defendant's eligibility for placement in the program. Judges would still be permitted to release defendants on their own recognizance.

The bill requires pretrial release programs to notify every defendant released to the program of the times and places at which the defendant is required to appear before the court.

The bill also specifies that if a defendant seeks to post a surety bond, the defendant must do so without any interaction with, or restriction by, a pretrial release program.

The bill prohibits pretrial release programs from charging defendants any fee or charge other than those authorized by state law. Florida Statutes do not currently contain any provisions authorizing pretrial release programs to charge defendants any fees nor does the bill authorize any. As such, the pretrial release programs will no longer be able to charge defendants who participate in the program any fees.

The bill specifies that all pretrial release programs established by ordinance of the county commission, by administrative order of the court, or by any other means, enacted or established to facilitate the release of defendants from pretrial custody, are subject to the above provisions.

B. SECTION DIRECTORY:

Section 1. Amends s. 907.041, F.S., relating to pretrial detention and release.

Section 2. Provides an effective date of July 1, 2010.

¹⁰ Report No. 10-08.

¹¹ *Id.*

¹² Rule 3.111, Fla. R. Crim. Proc., define the term "Indigent" as a person who is unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person's family; "partially indigent" shall mean a person unable to pay more than a portion of the fee charged by an attorney, including costs of investigation, without substantial hardship to the person or the person's family.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill may have a significant negative fiscal impact on local government. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The bill will result in a reduction in the number of defendants eligible for pretrial release programs. Defendants who are unable to participate in pretrial release programs will instead have to post bail to gain pretrial release (or be released on their own recognizance). It is likely that some of these defendants will use the services of a bail bondsman to obtain the bail amount. As a result, bail bondsmen are likely to see an increase in revenues.

D. FISCAL COMMENTS:

Fiscal Analysis – Defendants Ineligible for Pretrial Release Programs Who Would Remain in Jail Until Disposition¹³

Defendants who will no longer be eligible to participate in pretrial release programs will likely go to jail. A portion of these defendants will not have the funds to post a bond and will remain in jail until the disposition of their case. Below is a fiscal analysis based upon information supplied by the counties.

Osceola County

Pretrial Release Program Budget = \$584,245

Almost 64% of pre-trial clients (6,029) would be ineligible per year based on the bill's requirements

- These clients would remain in jail until disposition or would remain in jail until bonded out

Average case takes 45 days to get resolved

Jail per diem = \$73.18

If 5% of the 6,029 clients remain in jail until disposition, the jail would need an additional 302 beds

- If an additional 302 clients remained in jail for 45 days at \$73.18 per day = **\$994,516**

If 15% of the 6,029 clients remain in jail until disposition, the jail would need an additional 905 beds

- If an additional 905 clients remained in jail for 45 days at \$73.18 per day = **\$2,980,255**

If 25% of the 6,029 clients remain in jail until disposition, the jail would need an additional 1,508 beds

- If an additional 1,508 clients remained in jail for 45 days at \$73.18 per day = **\$4,965,995**

If 50% of the 6,029 clients remain in jail until disposition, the jail would need an additional 3,015 beds

- If an additional 3,015 clients remained in jail for 45 days at \$73.18 per day = **\$9,928,697**

¹³ Staff used information provided by the counties to create the following fiscal analysis.

These figures do not include the cost of *constructing* any new jail beds

- the Osceola County Jail is currently operating 23% over capacity (has a capacity of 873 beds and currently houses 1,072 inmates)
- Osceola County Corrections Department reports that a new correctional facility will need to be constructed in order to increase the operational capacity of the jail

Monroe County

Almost 50% of pre-trial clients (432) would be ineligible based on the bill's requirements

- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = \$82.00

Assume an average case takes 2 months to get resolved

If 5% of the 432 clients remain in jail until disposition, the jail would need an additional 22 beds

- If an additional 22 clients remained in jail for 60 days at \$82.00 per day = **\$108,240**

If 15% of the 432 clients remain in jail until disposition, the jail would need an additional 65 beds

- If an additional 65 clients remained in jail for 60 days at \$82.00 per day = **\$319,800**

If 25% of the 432 clients remain in jail until disposition, the jail would need an additional 108 beds

- If an additional 108 clients remained in jail for 60 days at \$82.00 per day = **\$531,360**

If 50% of the 432 clients remain in jail until disposition, the jail would need an additional 216 beds

- If an additional 216 clients remained in jail for 60 days at \$82.00 per day = **\$1,062,720**

Palm Beach County

Pretrial Release Program Budget = \$1,500,676

Approximately 67% of pre-trial clients (3,408) would be ineligible based on the bill's requirements

- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = \$125.00

Assume an average case takes 2 months to get resolved

If 5% of the 3,408 clients remain in jail until disposition, the jail would need an additional 171 beds

- If an additional 171 clients remained in jail for 60 days at \$125.00 per day = **\$1,282,500**

If 15% of the 3,408 clients remain in jail until disposition, the jail would need an additional 512 beds

- If an additional 512 clients remained in jail for 60 days at \$125.00 per day = **\$3,840,000**

If 25% of the 3,408 clients remain in jail until disposition, the jail would need an additional 852 beds

- If an additional 852 clients remained in jail for 60 days at \$125.00 per day = **\$6,390,000**

If 50% of the 3,408 clients remain in jail until disposition, the jail would need an additional 1,704 beds

- If an additional 1,704 clients remained in jail for 60 days at \$125.00 per day = **\$12,780,000**

St. Lucie County

Pretrial Release Program Budget = \$1,146,978

Approximately 75% of pre-trial clients (291) would be ineligible based on the bill's requirements

- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = \$60.00

Assume an average case takes 2 months to get resolved

If 5% of the 291 clients remain in jail until disposition, the jail would need an additional 15 beds

- If an additional 15 clients remained in jail for 60 days at \$60.00 per day = **\$54,000**

If 15% of the 291 clients remain in jail until disposition, the jail would need an additional 44 beds

- If an additional 44 clients remained in jail for 60 days at \$60.00 per day = **\$158,400**

If 25% of the 291 clients remain in jail until disposition, the jail would need an additional 73 beds

- If an additional 73 clients remained in jail for 60 days at \$60.00 per day = **\$262,800**

If 50% of the 291 clients remain in jail until disposition, the jail would need an additional 146 beds

- If an additional 146 clients remained in jail for 60 days at \$60.00 per day = **\$525,600**

Sarasota County

Pretrial Release Program Budget = \$1,406,259

Approximately 2,112 pre-trial clients would no longer be eligible based on the bill's requirements

- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = \$75.00

An average case takes 28 days to get resolved

If 5% of the 2,112 clients remain in jail until disposition, the jail would need an additional 106 beds

- If an additional 106 clients remained in jail for 28 days at \$75.00 per day = **\$222,600**

If 15% of the 2,112 clients remain in jail until disposition, the jail would need an additional 317 beds

- If an additional 317 clients remained in jail for 28 days at \$75.00 per day = **\$665,700**

If 25% of the 2,112 clients remain in jail until disposition, the jail would need an additional 528 beds

- If an additional 528 clients remained in jail for 28 days at \$75.00 per day = **\$1,108,800**

If 50% of the 2,112 clients remain in jail until disposition, the jail would need an additional 1,056 beds

- If an additional 1,056 clients remained in jail for 28 days at \$75.00 per day = **\$2,217,600**

Miami – Dade

Pretrial Release Program Budget = \$4,826,119

Approximately 55% of pre-trial clients (7,282) would be ineligible based on the bill's requirements

- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = \$134.27

An average case takes 21 days to get resolved

If 5% of the 7,282 clients remain in jail until disposition, the jail would need an additional 365 beds

- If an additional 365 clients remained in jail for 21 days at \$134.27 per day = **\$1,029,180**

If 15% of the 7,282 clients remain in jail until disposition, the jail would need an additional 1,093 beds

- If an additional 1,093 clients remained in jail for 21 days at \$134.27 per day = **\$3,081,889**

If 25% of the 7,282 clients remain in jail until disposition, the jail would need an additional 1,821 beds

- If an additional 1,821 clients remained in jail for 21 days at \$134.27 per day = **\$5,134,619**

If 50% of the 7,282 clients remain in jail until disposition, the jail would need an additional 3,641 beds

- If an additional 3,641 clients remained in jail for 21 days at \$134.27 per day = **\$10,266,418**

* These figures do not include the cost of *constructing* new jail beds.

* Unless otherwise provided by a county, staff assumed that the average time a defendant would spend in jail awaiting disposition of his or her case was 60 days.

Fiscal Analysis – Defendants ineligible for Pretrial Release Programs who would bond out of jail

Defendants who will no longer be eligible to participate in pretrial release programs will likely go to jail. A portion of these defendants will pay a bond to get out of jail. Some defendants may be able to immediately pay their bond. However, it may take other defendants a longer amount of time to gather enough funds to pay their bond. There is no clear estimate on how long it would take defendants who are not eligible to participate in pretrial release programs to pay a bond. However, defendants who are not eligible to participate in pretrial release programs and who spend additional time in jail while gathering bond funds will increase a jail's population.

Fiscal Analysis – Funding

The bill prohibits pretrial release programs from charging defendants any fee or charge other than those authorized by state law. Florida Statutes do not currently contain any provisions authorizing pretrial release programs to charge defendants any fees nor does the bill authorize any. As such, the pretrial release programs will not be able to charge defendants who participate in the program any fees.

Fiscal Analysis – Indigent Defendants

Under the bill, only indigent inmates can participate in pretrial release programs - non-indigent defendants are prohibited from participating in the programs. Pursuant to Rule 3.111, Fla. R. Crim., Proc., a person is indigent if they are unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person's family. Defendants who are not indigent may or may not have the financial means to post a bond.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill may require counties or municipalities to spend funds or take an action requiring the expenditure of funds. However, if the legislature determines that the bill fulfills an important state interest, an exception to the mandates provision exists because the bill applies to all persons similarly situated, including the state.

2. Other: None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires that one's financial status be a factor in determining whether a person is eligible to participate in pretrial release programs. However, the primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether the person threatens the integrity of the judicial process.

As noted above, pretrial release programs actively supervise participating defendants. The programs do so through phone contacts, drug and alcohol testing services, visits, and/or electronic monitoring until the defendant's case is disposed or until the defendant's supervision is revoked. Bail bondsmen are generally not required to supervise defendants.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES