HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1379 Pretrial Programs
SPONSOR(S): Criminal Justice Subcommittee; Dorworth and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	7 Y, 6 N, As CS	Cunningham	Cunningham
2) Judiciary Committee			

SUMMARY ANALYSIS

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges. 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. Generally, pretrial release can be granted in one of three ways – released on one's own recognizance, by posting a bond, or through a pretrial release program.

Pretrial release programs, which are primarily funded by the county, actively supervise approved defendants through phone contacts, visits, electronic monitoring. etc., until the defendant's case is disposed or until the defendant's supervision is revoked. There are no pretrial release program eligibility criteria in the Florida Statutes – each county develops its own criteria for determining who is eligible.

The bill creates an unnumbered section of statute entitled "Eligibility criteria for government-funded pretrial release." The bill provides that a defendant is eligible to receive government-funded pretrial release only by order of the court after the court finds in writing, upon consideration of the defendant's affidavit of indigence:

- That the defendant is indigent or partially indigent as set forth in Rule 3.111, Florida Rules of Criminal Procedure; and
- That the defendant has not previously failed to appear at any required court proceeding.

The bill specifies that pretrial release programs are subject to the eligibility criteria outlined above, and that such criteria supersede and preempt all conflicting local ordinances, orders, or practices.

The bill also requires:

- That defendants who seek to post a surety bond pursuant to a bond schedule established by administrative order as an alternative to government-funded pretrial release be permitted to do so without any interference or restriction by a pretrial release program.
- Pretrial release programs to certify annually, in writing, to the chief circuit court judge, that the program has complied with the reporting requirements in s. 907.043(4), F.S.

The bill specifies that the above provisions do not prohibit a court from releasing a defendant on the defendant's own recognizance; or imposing upon the defendant any additional reasonable condition of release including, but not limited to, electronic monitoring, drug testing, or substance abuse treatment.

The bill may have a fiscal impact on local government and is effective October 1, 2011. See "Fiscal Comments."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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]

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).[4] 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.

Types of Pretrial Release
Generally, pretrial release can be granted in one of the following three ways:[5]

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.[6] 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.

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[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, of the 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*, section 907.041(1), F.S.
[4] 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.
[5] Report No. 10-08, *"Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010.
[6] Some defendants can also be released at the time of arrest with a notice to appear in court.

Pretrial Release Programs

Pretrial release programs[7] 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 can be released into a pretrial release program with or without paying a bond.[8] 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. However, 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.[9]

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.[10]

Pretrial Release Programs in Florida

There are currently 28 county pretrial release programs in Florida.[11] Section 907.044, F.S., requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct annual studies to evaluate the effectiveness and cost efficiency of pretrial release programs in the state. The county pretrial release programs are required to submit annual reports to OPPAGA by March 31 of every year which OPPAGA uses to gather the data for OPPAGA's annual evaluation of the programs. The OPPAGA report issued in December of 2010[12] analyzed the programs' performance for the 2009 calendar year and answered four primary questions.

1. How are Florida's Pretrial Release Programs Funded?

None of the 28 county pretrial release programs receive state general revenue funding.[13] The programs are initiated, administrated, and funded at the county government level. The counties that operate these programs determine their budgets, funding sources and the scope of the programs' services.[14]

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[7] 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.

[8] Judges in 23 of the 28 counties that have pretrial release programs may require defendants to post a bond in addition to participating in a pretrial release program. Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

[9] Section 907.041(3)(b), F.S.

[10] 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.

[11] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

[12] Five of the 28 programs have sought and received grant funding. *Id*.

[13] *Id*.

[14] *Id*.

Twelve programs charge fees to defendants participating in the program. Two of those counties (Leon and Palm Beach) require payment of cost of supervision which is used to help pay for the pretrial release programs. Some counties collect fees for urinalysis, electronic monitoring, GPS monitoring or telephone monitoring. These fees and costs are paid to vendors such as laboratories or other service providers and some portion of the funds may be deposited as county general revenue.[15]

2. *What is the nature of the criminal charges of defendants in pretrial release programs?*

Section 907.044, F.S., requires OPPAGA to report data regarding the nature of the criminal charges of defendants in county pretrial programs. However, such data is not generally collected by the pretrial programs in either the content or the form that s. 907.044, F.S., requires OPPAGA to analyze.

Section 907.043, F.S., requires that data be gathered and reported on a *weekly* basis by the pretrial release programs in a register held in the office of the local clerk of the circuit court. Section 907.043(3)(b)6., F.S., requires weekly program reporting of "*the charges* filed against and the case numbers of defendants accepted into the pretrial release program."

Subsection (4) of s. 907.043, F.S., which contains the *annual* reporting requirements to OPPAGA by the programs, does not contain a component that is similar to either the weekly component or the component OPPAGA must analyze.[16]

Due to the dissimilarity in reporting requirements, OPPAGA has only been able to report on seven county programs regarding this particular measure. Of those seven, one county reported that approximately 70 percent of its participants had prior violent felonies. The other six counties reported a much larger number of participants with no prior violent felonies.[17]

3. *How many defendants served by pretrial release programs were issued warrants for failing to appear in court or were arrested while in the program?*

Two counties reported that no warrants were issued for defendants participating in their programs for failure to appear in court. At the other end of the spectrum, Miami-Dade reported that of 16,342 participants, 1,861 (11.4%) had warrants issued for their failure to appear.[18]

It should be noted that because of the ambiguity in the statutory language, persons who were arrested for failure to appear might be counted in both of the two categories this question is meant to analyze: a warrant may have been issued for failure to appear *and* the person may have been *arrested* on that warrant for failure to appear.

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[15] *Id*.

[16] Section 907.043(4)(b), F.S. requires the following:
1. The name, location, and funding sources of the pretrial release program, including the amount of public funds, if any, received by the pretrial release program. 2. The operating and capital budget of each pretrial release program receiving public funds. 3. The percentage of the pretrial release program's total budget representing receipt of public funds; the percentage of the total budget which is allocated to assisting defendants obtain release through a nonpublicly funded program; the amount of fees paid by defendants to the pretrial release program. 4. The number of persons employed by the pretrial release program. 5. The number of defendants assessed and interviewed for pretrial release. 6. The number of defendants recommended for pretrial release. 7. The number of defendants for whom the pretrial release program recommended against nonsecured release. 8. The number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release. 9. The number of defendants assessed and interviewed for pretrial release who were declared indigent by the court. 10. The name and case number of each person granted nonsecured release who: failed to attend a scheduled court appearance; was issued a warrant for failing to appear; was arrested for any offense while on release through the pretrial release program; and any additional information deemed necessary by the governing body to assess the performance and cost efficiency of the pretrial release program.

[17] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

[18] *Id*.

4. Are pretrial release programs complying with statutory reporting requirements?

Due to the ambiguous and problematic statutory language (discussed above), OPPAGA has had challenges collecting the data that Office needs to complete a thorough analysis as to whether pretrial programs are complying with statutory reporting requirements.

All of the data elements do not apply to all of the pretrial programs. There is variation among the county pretrial programs in areas such as whether the program selects its participants, whether the program makes release recommendations to the court, or even whether pretrial services personnel attend First Appearance. Therefore, data elements like "the number of defendants recommended for pretrial release"[19] simply may not have a response.

Another problem encountered in the reporting process has been the restrictions by federal law on public access to national criminal history records and the Florida Department of Law Enforcement's (FDLE) determination that the statute cannot authorize the dissemination of that information. This restriction resulted in most programs not providing the criminal history information required by s. 907.043(3)(b)7., F.S.[20]

OPPAGA's latest report suggests statutory revisions that should lead to better data reporting and analysis. OPPAGA also noted that they could not determine whether pretrial programs are more effective than other forms of pretrial release (bond and ROR) as there is no comparative statewide data on the outcomes of those release mechanisms.[21]

Determination of Indigency

In Florida, a person who is arrested and before the court at First Appearance is likely to have the public defender appointed to represent him or her, if only temporarily for the purposes of the First Appearance hearing, unless the arrest is on a minor misdemeanor offense which is unlikely to result in a loss of liberty.

With the defendant placed under oath, a court generally inquires about whether the defendant can afford to hire a lawyer, and may question the defendant regarding employment and property ownership. If the court is satisfied that the defendant is most likely indigent based upon the answers given, an application seeking appointment of the public defender is signed by the defendant at that time. Some jurisdictions may complete the application process in a different manner, but if the defendant is incarcerated it is the responsibility of the public defender to assist the defendant in the application process.[22]

The application seeking appointment of the public defender is submitted to the clerk of the court, with a $50 application fee, for verification of the information required in the application.[23] The clerk also considers the following:

- A person is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans" benefits, or Supplemental Security Income (SSI).
- There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of $2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding $5,000.

[19] Section 907.043(4)(b)6., F.S.
[20] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.
[21] *Id*.
[22] Section 27.52(1), F.S.
[23] Section 27.52(1)(a), F.S.

- The clerk conducts a review of the property records for the county in which the applicant resides and the motor vehicle title records of the state to identify any property interests of the applicant.[24]

The clerk then determines whether the applicant is indigent or not indigent. The determination of indigent status is a ministerial act of the clerk and not a decision based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk by Florida Statute.[25]

As previously mentioned, if the clerk of the court has not made a determination of indigent status at the time a person requests appointment of a public defender, most likely at First Appearance or possibly Arraignment, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender, the office of criminal conflict and civil regional counsel, or private counsel on an interim basis.[26]

The Florida Rules of Criminal Procedure define indigency and set forth the procedures the court must follow in appointing counsel to represent the indigent.

> "Indigent" shall mean 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.
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> Before appointing a public defender, the court shall: (A) inform the accused that, if the public defender or other counsel is appointed, a lien for the services rendered by counsel may be imposed as provided by law; (B) make inquiry into the financial status of the accused in a manner not inconsistent with the guidelines established by section 27.52, Florida Statutes. The accused shall respond to the inquiry under oath; (C) require the accused to execute an affidavit of insolvency as required by section 27.52, Florida Statutes.[27]

Indigency is not currently a requirement for participation in Florida's pretrial release programs.

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 an unnumbered section of statute entitled "Eligibility criteria for government-funded pretrial release." The bill provides that it is the policy of this state that:

- Only defendants who are indigent and therefore qualify for representation by the public defender are eligible for government-funded pretrial release.
- To the greatest extent possible, the resources of the private sector be used to assist in the pretrial release of defendants.

The bill provides that it is the intent of the Legislature that:

- The bill's provisions not be interpreted to limit the discretion of courts with respect to ordering reasonable conditions for pretrial release on a defendant.
- Government-funded pretrial release be ordered only as an alternative to release on a defendant's own recognizance or release by the posting of a surety bond.

[24] Section 27.52(2)(a), F.S.
[25] Section 27.52(2)(d), F.S.
[26] Section 27.52(3), F.S.
[27] Rule 3.111(b)(4)-(5), Fla. R. Crim. Proc.

The bill provides that a defendant is eligible to receive government-funded pretrial release only by order of the court after the court finds in writing, upon consideration of the defendant's affidavit of indigence:

- That the defendant is indigent or partially indigent as set forth in Rule 3.111, Florida Rules of Criminal Procedure; and
- That the defendant has not previously failed to appear at any required court proceeding.

The bill specifies that pretrial release programs[28] are subject to the eligibility criteria outlined above, and that such criteria supersede and preempt all conflicting local ordinances, orders, or practices.

The bill also requires:

- That defendants who seek to post a surety bond pursuant to a bond schedule established by administrative order as an alternative to government-funded pretrial release be permitted to do so without any interference or restriction by a pretrial release program.
- Pretrial release programs to certify annually, in writing, to the chief circuit court judge, that the program has complied with the reporting requirements in s. 907.043(4), F.S.

The bill specifies that the above provisions do not prohibit a court from:

- Releasing a defendant on the defendant's own recognizance; or
- Imposing upon the defendant any additional reasonable condition of release as part of release on the defendant's own recognizance or the posting of a surety bond upon a finding of need in the interest of public safety, including, but not limited to, electronic monitoring, drug testing, or substance abuse treatment.

The bill provides that in lieu of using a government-funded program to ensure the court appearance of a defendant, a county may reimburse a licensed surety agent for the premium costs of surety bail bond that secures the appearance of an indigent defendant at all court proceedings if the court establishes a bail bond amount for the indigent defendant.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of statute relating to the eligibility criteria for government-funded pretrial release.

Section 2. The bill is effective October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill has yet to be heard by the Criminal Justice Impact Conference (CJIC). However, on April 15, 2010, CJIC determined that Senate Bill 782 from the 2010 Session, which is similar to this bill, would have an indeterminate prison bed impact on the Department of Corrections. CJIC commented that the state prison bed impact was based on an anticipated increase in the county jail population, which they found was also indeterminate.

[28] The bill includes pretrial release programs established by an ordinance of the county commission, an administrative order of the court, or by any other means in order to assist in the release of defendants from pretrial custody.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Jail Population May Be Impacted

According to OPPAGA, jail population and occupancy rates vary widely throughout the state and there appears to be no correlation between a counties' occupancy rate and whether or not they have a local pretrial release program. The potential impact of this bill on the state's local jail population is difficult to predict in any scientific way or with any measure of certainty because of a multitude of factors.

As a result of this bill, defendants who are ineligible to participate in pretrial release programs will instead have to post a bond to gain pretrial release. Some defendants will have the ability to immediately post a bond. Others may ultimately post a bond, but may spend additional time in jail while accumulating the funds to do so. For these reasons, counties may see an increase in their jail population and need for jail beds. The potential jail impact is indeterminate and highly dependent upon what portion of the non-indigent defendants have the resources to post bond and how long they stay in jail until they are able to make the financial arrangements for their release.

According to the Florida Association of Counties, all of the 28 pretrial release programs in the state serve non-indigent defendants.[29] It can be expected that the greatest impact from this bill may be experienced in the counties that have pretrial programs who admit a large percentage of non-indigents like Okaloosa, Broward and Sarasota.

It is important to note that the Pasco County jail population did not increase after it abolished its pretrial program in February of 2009.[30] Advocates of the bill point to the Pasco County experience as an indicator that this bill will not cause an increase in county jail populations. Despite the Pasco County experience, the counties and some representatives from law enforcement predict that this bill could potentially lead to an indeterminate but significant number of more pretrial detainees remaining incarcerated for longer periods of time in local jails.

This bill has yet to be heard by the CJIC. However, on April 15, 2010, CJIC determined that Senate Bill 782 from the 2010 Session, which is similar to this bill, would have an indeterminate prison bed impact on the Department of Corrections. CJIC commented that the state prison bed impact was based on an anticipated increase in the county jail population, which they found was also indeterminate.

Collection of Participant Fees That Support Pretrial Program Budgets and Provide Support and Surveillance Services Will Decline

Of the 28 pretrial release programs in Florida, twelve[31] charge fees to program participants to support program budgets and to pay vendors for services to defendants, primarily electronic monitoring services. If this bill becomes law, it is estimated that the number of participants in the pretrial release program will decline and the collection of fees associated with their participation will be reduced since the remaining indigent defendants will be less likely to be able to pay such fees.

[29] The percentage of pretrial release participants who are non-indigent varies from program to program, with a high of 56% in Sarasota county to a low of 10% in Escambia county.

[30] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

[31] *Id*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Demand for Private Surety Bond Services Will Likely Increase
Currently, local pretrial release programs in this state are available to defendants regardless of their financial status. The bill limits participation in such program to indigent defendants. This will likely increase the number of pretrial detainees who pay for a commercial bond in order to be released from jail. Consequently, bail bondsmen are likely to see an increase in revenue if the bill becomes law.

More Non-Indigent Defendants Will Pay the Private Sector Rather Than the Public Sector For Release from Jail
Non-indigent defendants who were previously eligible for a local pretrial release program will not be eligible under the bill and must post a commercial bond to be released from jail. If these non-indigent defendants are unable to post a bond, then they will remain incarcerated until the disposition of their criminal charges. For those defendants who do post a bond, insufficient information on the cost of bonds, participant fees, and program costs makes it difficult to ascertain whether the total costs to the affected defendants will be higher or lower as a result of this bill.

Vendors Who Provide Supervision Services to Pretrial Release Participants Will Lose Revenue
Six of the 28 pretrial release programs contract with vendors for GPS and electronic monitoring, drug and alcohol testing, kiosk reporting, and other services rendered to defendants.[32] These services are fully or partially supported by program participant fees. If this bill passes and the eligibility criteria for the pretrial release program is narrowed to only indigents, these contractual services will likely decline because the number of participants will be less and because indigent defendants will be less likely to afford these types of supervision and support services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. 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.

2. 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.

[32] Report No. 10-66, "*Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*," Office of Program Policy Analysis & Government Accountability, December, 2010.

Bail bondsmen are generally not required to supervise defendants, but do have a vested interest in making sure their clients keep their court dates and do not abscond. Judges in many circuits require defendants who post bond to also be supervised by a pretrial release program and receive these contractual services as an added layer of accountability. Effective pretrial release programs supervise defendants and decrease the likelihood of reoffending and enhance public safety. If this bill passes and the eligibility criteria for the pretrial release program is narrowed to indigents, this additional layer of accountability and public safety will not be available to the judge for those non-indigent defendants.

3. The bill is unclear as to the role of the clerk of the court in the declaration of indigency procedures going forward. It appears that the intent of the bill is that the onus be on the court to find a person indigent pursuant to the applicable court rule, for purposes of pretrial release determinations. If it is the intent that the court's (First Appearance) determination be the final order on the matter, such intent needs to be clarified. If it is the bill's intent that a preliminary or temporary finding of indigency by the court at First Appearance will suffice for the "court order" as required for pretrial release program participation, that, too, needs clarification.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The strike-all amendment:

- Replaces the term "pretrial release program" with the term "government-funded pretrial release" in various places throughout the bill.
- Adds that it is the intent of the Legislature that government-funded pretrial release be ordered only as an alternative to release on a defendant's own recognizance or release by the posting of a surety bond.
- Removes a provision requiring pretrial release programs to disclose in writing to each defendant, at the defendant's initial interview, each and every fee that will be assessed for the defendant's supervision.

This analysis is drafted to the Committee Substitute.