

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1412

INTRODUCER: Senator Simmons

SUBJECT: Conditions of Pretrial Release

DATE: January 25, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McAloon	Cibula	JU	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 1412 clarifies that courts have the discretion to issue an order of no contact to a person on pretrial release. An order of no contact generally prohibits a defendant from being near or communicating with a victim. Existing law could be read to require a court to issue an order of no contact to every person who is released on pretrial release if there is a victim.

II. Present Situation:

Conditions of Pretrial Release

Section 903.047, Florida Statutes governs the conditions of pretrial release. The conditions include refraining from criminal activity, refraining from contact with the victim, and complying with any other condition imposed.¹ The requirement that a defendant refrain from contact with the victim is implemented through a no contact order. This order includes prohibitions on communicating with the victim, having physical or violent contact with the victim or other named person or his or her property, being within 500 feet of the victim's residence, or being within 500 feet of the victim's place of employment.²

A person who fails to comply with the conditions of pretrial release, if the original arrest was for an act of domestic violence, commits a first degree misdemeanor.³ The statute currently requires that provides the defendant receive a copy of the order of no contact before he or she is released from custody on pretrial release. The order is effective immediately upon issuance and enforceable for the duration of the pretrial release or until modified by the court.

¹ Section 903.047, F.S.

² Section 903.047(1)(b), F.S.

³ Section 741.29(6), F.S.

Statutory Ambiguity

Section 903.047(1)(b), F.S. currently states that “an order of no contact is effective immediately and enforceable for the duration of the pretrial release or until it is modified by the court. The defendant shall receive a copy of the order . . . before the defendant is released.”⁴ One reading of the statute requires a court to enter an order of no contact for all cases for which there is a victim and to serve the defendant with the order before release from jail. Alternatively, the statutory requirement to provide a copy of the no contact order might be read to apply only “if” an order of no contact is issued in a particular case.

2015 No Contact Legislation

The current language of s. 903.047(1)(b), F.S. was enacted through the passage of SB 342 during the 2015 Legislative Session. The bill analysis stated that the intent of SB 342 was to define the basic restrictions imposed on a defendant through a no contact order.⁵ The analysis also states the requirement that order be “effective immediately” was intended to prevent a detainee from making harassing phone calls to a victim while in jail awaiting a pretrial release.

No Contact Condition Case Law

In *Pilgore v. State*, the District Court of Appeal held that evidence was insufficient to establish that defendant was informed of the no contact condition of his pretrial release.⁶ Pilgore had been arrested for beating his wife and was released on bond with the condition of having no contact with the victim pursuant to s. 903.047, F.S.⁷ Subsequently, Pilgore made contact with the victim and was charged with violation of a condition of pretrial release pursuant to s. 741.29, F.S.⁸

The *Pilgore* court found the statute requires the imposition of the no contact condition to be proven by substantial competent evidence in order to convict of the person of the crime.⁹ The statute requires the court to impose the no contact condition on a person charged with domestic violence, but it does not create a presumption the defendant knows that he or she is to have no contact.¹⁰

In 2008, the Fifth DCA again held the state had the burden to prove the defendant received adequate notice of his pretrial no contact condition. In *Sheppard v. State*, the court stated “the state has the burden of proving, by substantial, competent evidence, that the condition was imposed on a defendant charged with domestic violence.”¹¹ The court went on to quote its decision in *Pilgore* to state there is no presumption that the defendant knows that he or she is to have no contact.¹²

⁴ *Id.*

⁵ Staff of S. Comm. on Rules, CS/CS/CS/SB 342, Bill Analysis and Fiscal Impact Statement on No Contact Orders (2015).

⁶ *Pilgore v. State*, 876 So. 2d 591 (Fla. 5th DCA 2004).

⁷ *Id.* at 591-92.

⁸ *Id.* at 592.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Sheppard v. State*, 974 So. 2d 529, 530 (Fla. 5th DCA 2008).

¹² *Id.* at 530.

Therefore, in order to be convicted of violating a no contact order by a person who was arrested for domestic violence, the state must prove by substantial competent evidence the defendant received constructive notice of the no contact condition laid out in s. 903.047, F.S. It cannot be presumed the defendant is on notice of the no contact condition.

III. Effect of Proposed Changes:

This bill clarifies that courts have the discretion to issue an order of no contact to a person on pretrial release. An order of no contact generally prohibits a defendant from being near or communicating with a victim. Existing law could be read to require a court to issue an order of no contact to every person who is released on pretrial release if there is a victim.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may result in a reduction in judicial workloads if it reduces the number of no contact orders issued.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends 903.047 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
