

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 361 Bail Bonds

**SPONSOR(S):** Judiciary Committee, Criminal Justice Subcommittee, Santiago

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 680

| REFERENCE                           | ACTION              | ANALYST     | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|-------------------------------------|---------------------|-------------|--|
| 1) Criminal Justice Subcommittee    | 14 Y, 0 N, As<br>CS | Hall        | White                                    |
| 2) Insurance & Banking Subcommittee | 11 Y, 3 N           | Hinshelwood | Luczynski                                |
| 3) Judiciary Committee              | 16 Y, 0 N, As<br>CS | Hall        | Camechis                                 |

### SUMMARY ANALYSIS

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. Bail requires an arrestee to pay a set sum of money to the court to be released from jail. As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent. A bail bond agent is generally enlisted by paying a nonrefundable fee to the bond agent equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond. This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release.

The bill makes a number of changes to ch. 903, F.S., including that it:

- Narrows the general responsibilities and liabilities of a bail bond agent;
- Removes any breach of the bond as a basis on which a forfeiture can occur, and narrows it to only a failure to appear before the court in a proceeding for which the surety bond was posted;
- Revises the reasons for which a forfeiture can be discharged;
- Expands the circumstances in which the clerk of court may automatically discharge a bond to include circumstances where the defendant is arrested and returned to the county of the jurisdiction of the court or has posted a new bond for the case at issue before judgment;
- Adds a circumstance in which a bond is considered to be satisfied for the purposes of canceling the bond to include cases in which a period of 36 months has passed since the original bond was posted;
- Limits the requirements for cancelation of a bond to exclude cases in which a bond has been declared forfeited before the 36-month expiration; and
- Adds placement in any court-ordered program, including a residential mental health facility, to the list of circumstances in which an original bond is not considered to guarantee the defendant's appearance.

The bill may have a fiscal impact on state and local governments.

The bill takes effect on July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Pretrial Release**

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.<sup>1</sup> Judges are required to presume that nonmonetary conditions<sup>2</sup> are sufficient for any person to be granted pretrial release<sup>3</sup> who is not charged with a dangerous crime.<sup>4</sup> Although courts have the authority to impose any number of pretrial release conditions, courts must impose conditions of release that require the defendant to refrain from criminal activity of any kind and to refrain from contact with the victim.<sup>5</sup> If a defendant violates the conditions of pretrial release imposed by the court, the person may be arrested and held to answer before the court that has jurisdiction to try the defendant.<sup>6</sup>

##### **Bail Bonds**

###### Issuance of a Bail Bond and the Commitment and Obligation of a Bail Bond Agent

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S., and requires an arrestee to pay a set sum of money, commonly called a cash bond, to the court to be released from jail.<sup>7</sup> As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond<sup>8</sup> executed by a bail bond agent licensed pursuant to ch. 648, F.S. A criminal surety bail bond requires a defendant to pay the bail bond agent a nonrefundable fee equal to 10 percent of the bail bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.<sup>9</sup> This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release. Section 903.045, F.S., (emphasis added) currently provides that a criminal surety bail bond:

[S]hall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding *or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.*

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<sup>1</sup> Conditions of pretrial release are determined at a defendant's first appearance hearing. FLA. R. CRIM. PROC. 3.130

<sup>2</sup> Nonmonetary conditions include any condition that does not require the payment of a financial guarantee, such as releasing the arrestee on his or her recognizance, placement in a pretrial release program, or placing restrictions on the arrestee's travel, association, or place of abode. *See* FLA. R. CRIM. P. 3.131.

<sup>3</sup> s. 907.041(3)(a), F.S.

<sup>4</sup> "Dangerous crimes" 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 the age of 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 and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime. s. 907.041, F.S.

<sup>5</sup> s. 903.047, F.S.

<sup>6</sup> FLA. R. CRIM. P. 3.131; s. 903.0471, F.S.; s. 907.041, F.S.

<sup>7</sup> The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges. *Universal Bail Bonds v. Florida*, 929 So.2d 697 (Fla. 3d DCA 2006).

<sup>8</sup> ss. 903.011 and 903.105, F.S.

<sup>9</sup> Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2015*, Report No. 16-10 (Dec. 2016) at 2.

### *Effect of the Bill*

The bill requires the bail bond agent to ensure that the defendant appears at all criminal proceedings for which the surety bond is posted. In doing so, the bill narrows the obligation of the bail bond agent, such that the defendant's failure to appear at proceedings not specifically ensured by the bond and the defendant's breach of any other condition no longer constitute a breach of the bail bond agent's commitment and obligation.

### Forfeiture of a Bail Bond

If there is a breach of the bond, which may be caused by a failure to appear before the court or for any other violation of the pretrial release conditions,<sup>10</sup> the court generally must declare the bond and any money deposited to be forfeited.<sup>11</sup> However, this forfeiture requirement does not apply even if there is a breach of the bond, when the information, indictment, or affidavit in the criminal case is not filed within six months of arrest, or the clerk of the court failed to provide the agent with at least 72 hours' notice of the time and date of the required appearance for the defendant.<sup>12</sup> Within five days after forfeiture of a bond, the court must mail or electronically transmit a notice to the bail bond agent and the surety company.<sup>13</sup> The value of the forfeited bond must be paid by the bail bond agent within 60 days of the date the notice was mailed or transmitted.<sup>14</sup>

### *Effect of the Bill*

The bill amends s. 903.26(2), F.S., to remove *any* breach of the bond as a basis on which a forfeiture can occur, and narrows it to only a defendant's failure to appear before the court in a proceeding for which the surety bond was posted.

### Discharge of a Bail Bond Forfeiture

In specific circumstances, a bond forfeiture can be effectively canceled when a discharge is entered by the court. Current law requires a court to discharge a forfeiture within 60 days if the court determines that:

- It was impossible for the defendant to appear as required due to circumstances beyond the defendant's control;
- At the time of the required appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- The defendant surrenders or is arrested, if the delay has not thwarted the proper prosecution of the defendant.<sup>15</sup>

In addition to the above, the clerk of court must discharge the forfeiture without further order of the court if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment. The bail bond agent is required to pay the costs associated with returning the defendant to the county of jurisdiction, as a condition of the clerk discharging the forfeiture.<sup>16</sup> Such costs include the "costs incurred by the sheriff's office in actually transporting the defendant from the county of arrest to the county holding the warrant."<sup>17</sup> This includes the prorated salary of the officers involved in transporting the defendant as well as the actual expenses for transportation.<sup>18</sup>

### *Effect of the Bill*

The reasons for which a forfeiture can be discharged are amended to include circumstances when:

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<sup>10</sup> If the defendant appears at some point on the date of his or her required appearance, the court in its discretion may direct the clerk to set aside a forfeiture of the bond which may have been previously entered. Any appearance of the defendant after that day, however, constitutes forfeiture of the bond. s. 903.26(2)(b), F.S.

<sup>11</sup> s. 903.26(2)(a), F.S.

<sup>12</sup> s. 903.26(1), F.S.

<sup>13</sup> s. 903.26(2)(a), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> s. 903.26(5), F.S.

<sup>16</sup> s. 903.26(8), F.S.

<sup>17</sup> *Easy Bail Bonds v. Polk County*, 784 So. 2d 1173, 1177 (Fla. 2d DCA 2001).

<sup>18</sup> *Id.*

- The court determines it was impossible for the defendant to appear as required or *within 60 days after the required appearance* due to circumstances beyond the defendant's control;
- The courts determines that at the time of the required appearance or *within 60 days after the required appearance*, the defendant was confined in an institution or hospital or in any county, state, federal, or immigration detention facility; was deported; or is deceased;
- The defendant has been surrendered or arrested at the time of the required appearance or *within 60 days after the required appearance* in any county, state, or federal jail or prison, and a hold is placed to return the defendant to the jurisdiction of the court;
- The court determines that the state is unwilling to seek nationwide extradition of the fugitive defendant within 30 days after a request by the surety agent to do so, and contingent upon the surety agent's consent to pay all costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court, up to the penal amount of the bond;<sup>19</sup> or
- The defendant has been arrested and returned to the county of the jurisdiction of the court or has posted a new bond for the case at issue before judgment, in which case, the clerk of court shall automatically discharge a bond without further hearing or order by the court.<sup>20</sup>

The extension of the time period, as indicated in italics above, for a bail bond agent to make this showing, may reduce the need for bail bond agents to pay the full amount of the forfeiture and later require a remission hearing when they can locate the defendant up to 60 days after the failure to appear. For example, if a defendant fails to appear in court and the bail bond agent locates him or her in another county jail and a hold is placed on the defendant for his or her return to the county holding the warrant within 60 days, the court may discharge the bond forfeiture. This would negate the current requirement for the bond agent to pay the full amount of the forfeiture, wait until the defendant is returned to the jurisdiction holding the warrant, and then require the court to hold a remission hearing to determine the amount of money eligible to be returned to the bond agent.

#### Cancelation of a Bail Bond

A cancelation of a bond concludes the bond and finalizes the extent of the bail bond agent's liabilities arising from the bond in question. Within 10 days after the conditions of a bond have been satisfied or a bond forfeiture has been discharged or remitted, the court shall order the bond to be canceled.<sup>21</sup> The original bond shall expire 36 months after the bond was posted for the release of the defendant.<sup>22</sup> In any case where formal charges have not been filed against the defendant within 365 days after arrest, the court shall order the bond canceled unless the state can show good cause for the failure. The conditions of a bond will be considered satisfied in any of the following circumstances:

- An adjudication of guilt or innocence;
- An acquittal; or
- A withholding of an adjudication of guilt.<sup>23</sup>

The original bond is not considered to guarantee the appearance of a defendant for certain circumstances in which he or she may later be released, including:

- Deferred sentences;
- Appearance during or after a presentence investigation;
- Appearance during or after appeals;<sup>24</sup>
- Conduct during or appearance after admission to a pretrial intervention program;
- Payment of fines; or

<sup>19</sup> The "penal amount" is the amount in which the bond is issued. US LEGAL, *Bonds Construction Law and Legal Definition*, <https://definitions.uslegal.com/b/bonds-construction/> (last visited Mar. 1, 2017).

<sup>20</sup> In this specific circumstance the automatic discharge may be entered without further hearing and order of the court.

<sup>21</sup> s. 903.31(1), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> While an appeal is pending a defendant may be granted a supersedeas bond conditioned on the defendant personally answering and abiding by the final order, sentence, or judgment of the appellate court and, if the case is remanded, on the defendant appearing before the court in which the case originated and not departing without leave of court. s. 924.065, F.S.

- Attendance at educational or rehabilitation facilities the court otherwise provides in the judgment.<sup>25</sup>

#### *Effect of the Bill*

The bill amends the circumstances in which a bond is considered satisfied to add cases in which 36 months have passed since the original bond was posted. The bill excludes cases in which a bond was declared forfeited before the 36-month expiration period from the application of the cancellation provisions. The bill also adds placement in any court-ordered program, including a residential mental health facility, to the list of circumstances in which the original bond is not considered to guarantee the defendant's appearance.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 903.045, F.S., relating to the nature of criminal surety bail bonds.

Section 2. Amends s. 903.26, F.S., relating to forfeiture of the bond.

Section 3. Amends s. 903.31, F.S., relating to canceling the bond.

Section 4. Provides an effective date of July 1, 2017.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill may decrease amounts deposited into the fine and forfeiture fund under s. 142.01, F.S., as a result of bond forfeitures that may be reduced by the bill.<sup>26</sup>
2. Expenditures: The bill does not appear to have any impact on state government expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill may decrease amounts deposited into a municipal fund under s. 903.26(3)(b), F.S., as a result of bond forfeitures that may be reduced by the bill.
2. Expenditures: The bill creates flexibility for judges and bail bond agents to remedy and resolve breaches of a bond. To the extent that a greater number of bonds are reinstated after forfeiture, and to the extent that signing onto bonds is more affordable for the bail bond agent, this may increase the number of arrestees that are able to post bail, thereby reducing the need for jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill creates flexibility for judges and bail bond agents to remedy and resolve breaches of a bond. This may reduce losses to bail bond agents related to the forfeiture of bonds.

D. FISCAL COMMENTS: None.

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<sup>25</sup> s. 903.31(2), F.S.

<sup>26</sup> s. 903.26(3), F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill in that the CS:

- Adds a circumstance when a court shall order discharge of a bond forfeiture, if the bail bond agent surrenders or arrests the defendant at the time of the required appearance or within 60 days after the date of the required appearance in any county, state, or federal jail or prison and a hold is placed to return the defendant to the jurisdiction of the court.
- Increases the time period from 10 days to 30 days for which the state may decide if it is unwilling to seek extradition of a fugitive defendant, for the purpose of a court determining if it shall order discharge of a bond forfeiture.

On April 20, 2017, the Judiciary Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill in that the CS:

- Removes a requirement for persons posting a cash bond to facilitate the release of a criminal defendant to be licensed as a bail bond agent under ch. 648, F.S.
- Removes an amendment to s. 903.28, F.S., relating to remission of forfeiture, to allow courts to retain discretion in determining the amount of money to be returned to a bail bond agent in a remission hearing.

This analysis is drafted to the CS as passed by the Judiciary Committee.