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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: FAV | . | |
| 02/06/2018 | . | |
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The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsection (2) of section 903.046 is redesignated as subsection (3), and a new subsection (2) is added to that section, to read:

903.046 Purpose of, presumption in, and criteria for bail determination.—

(2) There is a presumption that an individual arrested for



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11 committing a nonviolent misdemeanor crime shall be released on
12 nonmonetary conditions while he or she awaits trial. As used in
13 this section, the term "nonviolent misdemeanor" means any
14 misdemeanor offense other than battery, assault, or stalking.

15 Section 2. Section 903.0471, Florida Statutes, is amended
16 to read:

17 903.0471 Violation of condition of pretrial release.-

18 ~~Notwithstanding s. 907.041,~~ A court may, on its own motion,
19 revoke pretrial release and order pretrial detention if the
20 court finds probable cause to believe that the defendant
21 committed a new dangerous crime, as defined in s. 907.041, while
22 on pretrial release.

23 Section 3. Paragraph (a) of subsection (3), paragraphs (b)
24 and (c) of subsection (4) of section 907.041, Florida Statutes,
25 is amended to read:

26 907.041 Pretrial detention and release.-

27 (3) RELEASE ON NONMONETARY CONDITIONS.-

28 (a)1. It is the intent of the Legislature to create a
29 presumption in favor of release on nonmonetary conditions for
30 any person who is granted pretrial release unless such person is
31 charged with a dangerous crime as defined in subsection (4).
32 Such person shall be released on monetary conditions if it is
33 determined that such monetary conditions are necessary to assure
34 the presence of the person at trial or at other proceedings, to
35 protect the community from risk of physical harm to persons, to
36 assure the presence of the accused at trial, or to assure the
37 integrity of the judicial process.

38 2. It is the intent of the Legislature that a person
39 arrested for a nonviolent misdemeanor who is determined to not



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40 pose a threat to the safety of the community shall be released
41 on nonmonetary conditions until adjudication has been
42 determined. For purposes of this section, a "nonviolent
43 misdemeanor" means any misdemeanor offense other than battery,
44 assault, or stalking.

45 (4) PRETRIAL DETENTION.—

46 (b) A ~~No~~ person charged with a dangerous crime may not
47 ~~shall~~ be granted nonmonetary pretrial release at a first
48 appearance hearing; however, the court may release ~~shall retain~~
49 ~~the discretion to release~~ an accused person on electronic
50 monitoring or on recognizance bond if the findings on the record
51 of facts and circumstances warrant such a release.

52 (c) The court may order pretrial detention if it finds a
53 substantial probability, based on a defendant's past and present
54 patterns of behavior, the criteria in s. 903.046, and any other
55 relevant facts, that any of the following circumstances exist:

56 1. The defendant has previously violated conditions of
57 release and that no further conditions of release are reasonably
58 likely to assure the defendant's appearance at subsequent
59 proceedings;

60 2. The defendant, with the intent to obstruct the judicial
61 process, has threatened, intimidated, or injured any victim,
62 potential witness, juror, or judicial officer, or has attempted
63 or conspired to do so, and that no condition of release will
64 reasonably prevent the obstruction of the judicial process;

65 3. The defendant is charged with trafficking in controlled
66 substances as defined by s. 893.135, that there is a substantial
67 probability that the defendant has committed the offense, and
68 that no conditions of release will reasonably assure the



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69 defendant's appearance at subsequent criminal proceedings;
70 4. The defendant is charged with DUI manslaughter, as
71 defined by s. 316.193, and that there is a substantial
72 probability that the defendant committed the crime and that the
73 defendant poses a threat of harm to the community; a condition
74 ~~conditions~~ that would support a finding by the court pursuant to
75 this subparagraph that the defendant poses a threat of harm to
76 the community is if include, but are not limited to, any of the
77 following:

78 ~~a. the defendant has previously been convicted of any crime~~
79 ~~under s. 316.193, or of any crime in any other state or~~
80 ~~territory of the United States that is substantially similar to~~
81 ~~any crime under s. 316.193.~~

82 ~~b. The defendant was driving with a suspended driver~~
83 ~~license when the charged crime was committed; or~~

84 ~~c. The defendant has previously been found guilty of, or~~
85 ~~has had adjudication of guilt withheld for, driving while the~~
86 ~~defendant's driver license was suspended or revoked in violation~~
87 ~~of s. 322.34;~~

88 5. The defendant poses the threat of harm to the community.
89 The court may so conclude, if it finds that the defendant is
90 presently charged with a dangerous crime as defined in paragraph
91 (b), that there is a substantial probability that the defendant
92 committed such crime, that the factual circumstances of the
93 crime indicate a disregard for the safety of the community, and
94 that there are no conditions of release reasonably sufficient to
95 protect the community from the risk of physical harm to persons;

96 6. The defendant was on probation, parole, or other release
97 pending completion of sentence or on pretrial release for a



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98 dangerous crime at the time the current offense was committed;

99 7. The defendant has violated one or more conditions of
100 pretrial release or bond for the offense currently before the
101 court and the violation, in the discretion of the court,
102 supports a finding that no conditions of release can reasonably
103 protect the community from risk of physical harm to persons or
104 assure the presence of the accused at trial; or

105 8.a. The defendant has ever been sentenced pursuant to s.
106 775.082(9) or s. 775.084 as a prison releasee reoffender,
107 habitual violent felony offender, three-time violent felony
108 offender, or violent career criminal, or the state attorney
109 files a notice seeking that the defendant be sentenced pursuant
110 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
111 habitual violent felony offender, three-time violent felony
112 offender, or violent career criminal;

113 b. There is a substantial probability that the defendant
114 committed the offense; and

115 c. There are no conditions of release that can reasonably
116 protect the community from risk of physical harm or ensure the
117 presence of the accused at trial.

118 Section 4. Section 907.042, Florida Statutes, is created to
119 read:

120 907.042 Supervised bond program.-

121 (1) LEGISLATIVE FINDINGS.-The Legislature finds that there
122 is a need to use evidence-based methods to identify defendants
123 that can successfully comply with specified pretrial release
124 conditions. The Legislature finds that the use of actuarial
125 instruments that evaluate criminogenic based needs and classify
126 defendants according to levels of risk provides a more



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127 consistent and accurate assessment of a defendant's risk of
128 noncompliance while on pretrial release pending trial. The
129 Legislature also finds that both the community and a defendant
130 are better served when a defendant, who poses a low risk to
131 society, is provided the opportunity to fulfill employment and
132 familial responsibilities in the community under a structured
133 pretrial release plan that ensures the best chance of remaining
134 compliant with all pretrial conditions rather than remaining in
135 custody. The Legislature finds that there is a need to establish
136 a supervised bond program in each county for the purpose of
137 providing pretrial release to certain defendants who may not
138 otherwise be eligible for pretrial release on unsupervised
139 nonmonetary conditions and who do not have the ability to
140 satisfy the bond imposed by the court. The Legislature finds
141 that the creation of such a program will reduce the likelihood
142 of persons remaining unnecessarily in custody pending trial.

143 (2) CREATION.—A supervised bond program shall be
144 established in each county by March 1, 2019, with the terms of
145 each program to be developed with concurrence of the chief judge
146 of the circuit, the chief county correctional officer, the state
147 attorney, and the public defender.

148 (3) EXCEPTION.—

149 (a) Counties or municipalities which have already adopted a
150 supervised bond program that meets the requirements contained in
151 this section, or have chosen to opt out of this section in the
152 manner provided herein, are exempt from the requirement to
153 establish such a program.

154 (b) The governing body of a fiscally constrained county as
155 defined in this section may elect to opt out of the requirements



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156 of this section, by a 60 percent vote of the voting members of
157 the governing board, notwithstanding a contrary decision of the
158 governing body of a county. Any local government that has
159 properly opted out of this section but subsequently chooses to
160 establish a supervised bond program may do so only pursuant to
161 the requirements of this section and may not deviate from such
162 requirements.

163 (c) For purposes of this section, the term "fiscally
164 constrained county" means a county within a rural area of
165 opportunity as designated by the Governor pursuant to s.
166 288.0656 or each county for which the value of a mill will raise
167 no more than \$5 million in revenue, based on the certified
168 school taxable value certified pursuant to s. 1011.62(4)(a)1.a.,
169 from the previous July 1.

170 (4) PROGRAM REQUIREMENTS.—A supervised bond program, at a
171 minimum, shall:

172 (a) Require the county's chief correctional officer to
173 administer the supervised bond program.

174 (b) Require the county's chief correctional officer, or his
175 or her designate, to administer the risk assessment instrument
176 to a potential defendant.

177 (c) Utilize a risk assessment instrument to determine
178 eligible defendants and determine an appropriate level of
179 supervision for each defendant upon release.

180 (d) Provide for the reduction of the court-ordered bond, up
181 to its entirety, upon the court's verification that a risk
182 assessment instrument has been administered and, as a result of
183 such assessment, the chief county correctional officer is
184 prepared to accept the defendant into the supervised bond



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185 program.

186 (e) Provide that the findings of the risk assessment
187 instrument will be used to create an individualized supervision
188 plan for each defendant that is tailored to the defendant's risk
189 level and needs.

190 (f) Require, as part of the individualized supervision
191 plan, any defendant released in the supervised bond program to
192 be placed on active electronic monitoring or active continuous
193 alcohol monitoring, or both, dependent upon the level of risk
194 indicated by the risk assessment instrument.

195 (g) Require weekly communication between the office of the
196 chief county correctional officer and the defendant as part of
197 the individualized supervision plan, which can be satisfied via
198 telephone or in person contact, dependent upon the level of risk
199 indicated by the risk assessment instrument.

200 (h) Establish procedures for addressing defendants who do
201 not comply with the terms of the individualized supervision plan
202 imposed through the supervised bond program.

203 (5) RISK ASSESSMENT INSTRUMENT.-

204 (a) The risk assessment instrument must consider, but need
205 not be limited to, the following criteria:

206 1. The nature and circumstances of the offense the
207 defendant is alleged to have committed.

208 2. The nature and extent of the defendant's prior criminal
209 history, if any.

210 3. Any prior history of the defendant failing to appear in
211 court.

212 4. The defendant's employment history, employability
213 skills, and employment interests.



214 5. The defendant's educational, vocational, and technical
215 training.

216 6. The defendant's background, including his or her family,
217 home, and community environment.

218 7. The defendant's physical and mental health history,
219 including any substance use.

220 8. An evaluation of the defendant's criminal thinking,
221 criminal associates, and social awareness.

222 (b) A county must use an independently validated risk
223 assessment instrument that contains the criteria enumerated in
224 paragraph (a).

225 (6) REPORTING.—Each county shall provide an annual report
226 to the Governor, the President of the Senate, and the Speaker of
227 the House of Representatives by October 1 of each year which
228 details the results of the administration of the risk assessment
229 instrument, programming used for defendants who received the
230 assessment and were accepted into the supervised bond program,
231 the success rate of such program, and savings realized by each
232 county as a result of such defendants being released from
233 custody pending trial. The first report shall be submitted no
234 later than October 1, 2020.

235
236 ===== T I T L E A M E N D M E N T =====

237 And the title is amended as follows:

238 Delete everything before the enacting clause
239 and insert:

240 A bill to be entitled
241 An act relating to pretrial release; amending s.
242 903.046, F.S.; creating a presumption that individuals



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243 arrested for allegedly committing nonviolent
244 misdemeanors be released on nonmonetary conditions;
245 defining the term "nonviolent misdemeanor"; amending
246 s. 903.0471, F.S.; authorizing a court to revoke
247 pretrial release and order pretrial detention if the
248 court finds probable cause to believe that the
249 defendant committed a new dangerous crime while on
250 pretrial release; amending s. 907.041, F.S.; providing
251 that it is the intent of the Legislature that
252 individuals arrested for allegedly committing
253 nonviolent misdemeanors be released on nonmonetary
254 conditions; defining the term "nonviolent
255 misdemeanor"; making technical changes; deleting
256 conditions that the court may use to determine that a
257 defendant charged with DUI manslaughter poses a threat
258 to the community; creating s. 907.042, F.S.; providing
259 legislative findings; creating a supervised bond
260 release program in each county; establishing the
261 program with the concurrence of the chief judge, chief
262 county correctional officer, state attorney, and
263 public defender; providing exceptions for county
264 establishing a program; authorizing a fiscally
265 constrained county to the opt out of establishing a
266 program; defining "fiscally constrained county";
267 providing specified program components; providing
268 guidelines for the risk assessment instrument;
269 requiring each county to submit a report annually by a
270 certain date to the Governor, President of the Senate,
271 and Speaker of the House of Representatives; providing



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reporting requirements; providing an effective date.