

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 Criminal Justice

BILL: SB 1490

INTRODUCER: Senator Bracy

SUBJECT: Determining Bail

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1490 amends a variety of provisions related to bond and pretrial release. The purpose of and legislative findings applicable to bail and pretrial detention are amended to focus on defendants charged with violent crimes, rather than defendants charged with any crime. The bill creates a presumption that a defendant charged with a nonviolent misdemeanor will be released on nonmonetary conditions. A nonviolent misdemeanor is defined in the bill to exclude assault as defined in s. 784.011, F.S.

The bill deletes two circumstances from s. 907.041(4)(c), F.S., that the court can find when determining whether a defendant charged with driving under the influence manslaughter poses a threat of harm to the community and must therefore be detained pretrial.

The bill amends s. 903.0471, F.S., limiting the court's authority to revoke a defendant's bond or pretrial release conditions to circumstances where the court finds probable cause that he or she committed a new violent or dangerous crime while on pretrial release, rather than the probable cause that he or she committed *any* new offense.

The bill is effective July 1, 2018.

II. Present Situation:

Upon being arrested for a crime in Florida, a person is taken to the county jail for processing.¹ An arrestee must be brought before a judge for a first appearance hearing within 24 hours of

¹ See s. 907.04, F.S.

arrest.² The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.³

Types of Pretrial Release

There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance.⁴

Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant, regardless of the severity of his or her crime, at subsequent proceedings and to protect the community against unreasonable danger from the defendant.⁵ Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S.⁶ For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances.⁷

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond⁸ executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee 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.⁹

Pretrial Release Conditions

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

² Rules 3.130(a) and 3.132(a), Fla. R. Crim. Pro. Rule 3.130 further provides that at the first hearing the court must advise the defendant about the criminal charge; appoint counsel, if the defendant is indigent, or allow the defendant to have his or her hired counsel present; and determine terms of pretrial release.

³ Article I, s. 14, FLA CONST. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id.*

⁴ See art. I, s. 14, Fla. Const.; See also ss. 903.046 and 907.041, F.S.

⁵ Section 903.046(1), F.S.

⁶ "Bail," Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

⁷ *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

⁸ Sections 903.011 and 903.105, F.S.

⁹ Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2016*, Report No. 17-12, at 2. (Dec. 2017) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1712rpt.pdf> (last visited January 24, 2018).

- Comply with any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.¹⁰

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond, however a judge can require a defendant to post a bond and participate in the program.¹¹ Specifically, s. 907.041, F.S., provides 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.¹² These programs supervise defendants with various methods, from phone contact, to electronic monitoring.¹³

Release on Recognizance

A defendant released on his or her own recognizance is released without a monetary requirement and without any conditions of release or supervision of any type.¹⁴

A Court's Determination of Pretrial Release

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including, but not limited to:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail or procure an appearance bond, particularly whether the proffered funds, real property, property, or any proposed collateral or bond premium may be

¹⁰ Rule 3.131(b)(1), Fla. R. Crim. Pro.

¹¹ *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.

¹² Section 907.041, F.S., defines a dangerous crime to mean any of the following: Arson; Aggravated assault; Aggravated battery; Illegal use of explosives; Child abuse or aggravated child abuse; Abuse of an elderly person or disabled adult, 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.; Attempting or conspiring to commit any such crime; and Human trafficking.

¹³ *Supra* n. 9.

¹⁴ Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities.¹⁵

- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.¹⁶

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure, if applicable;¹⁷ and
- Comply with all conditions of pretrial release.

Standard Bond Schedule

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge.¹⁸ Even though a county may have an established standard

¹⁵ Section 903.046(2)(f), F.S., places the burden on the defendant to establish that the funds, real property, property, or any proposed collateral or bond premium is not involved in or derived from criminal or other illicit activity.

¹⁶ Section 903.046(2), F.S. *See also* Rule 3.131(b)(3), Fla. R. Crim. Pro.

¹⁷ Section 903.047(1)(b), F.S., provides that in a case where the court imposes a no contact order, the defendant must be informed in writing of the order of no contact, including the specified prohibited acts, before the defendant is released from custody on pretrial release. No contact includes: a) communicating orally or in any written form in a variety of modes, including either directly or indirectly through a third person, with the victim or any other person named in the order. However, if the defendant and victim have children in common, the court may designate an appropriate third person to contact the victim for the sole purpose of facilitating the defendant's contact with the children; b) having physical or violent contact with the victim or other named person or his or her property; c) being within 500 feet of the victim's or other named person's residence, even if the defendant and the victim or other named person share the residence; and d) being within 500 feet of the victim's or other named person's vehicle, place of employment, or a specified place frequented regularly by such person. Section 903.047(2), F.S., also provides that a no contact order may be modified by the court upon motion of the defendant.

¹⁸ Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a \$5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. *See* Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order IN RE: Uniform Bond Schedule*, available at <http://jud10.flcourts.org/sites/all/files/docs/2-49.8.pdf>; Wakulla Sheriff's Office, Corrections, *Bond Schedule*, available at <http://www.wcso.org/bond-schedule/>; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm> (last visited all sites January 22, 2018).

bond schedule, a judge has the discretion to impose a bond that is above or below such schedule if he or she deems it is necessary based upon the circumstances of the case.¹⁹

Pretrial Detention

If the court believes that there are no conditions of release that can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.²⁰

Section 907.041(4)(c), F.S., provides that a defendant may be detained pretrial if the court finds with substantial probability, based on a defendant's history, any of the following circumstances exist, including, in part:

- The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;
- The defendant is charged with DUI manslaughter, as defined by s. 316.193, F.S., and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community, which can be supported by a finding that the defendant poses a threat of harm to the community based upon the presence of any of the following:
 - The defendant has previously been convicted of any crime under s. 316.193, F.S., or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193, F.S.;
 - The defendant was driving with a suspended driver license when the charged crime was committed; or
 - The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34, F.S.; or
- The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed.²¹

An arresting agency is required to notify the state attorney when a person is arrested for a crime for which pretrial detention could be ordered. The notification to the state attorney from the arresting agency must provide specified information related to the offense, evidence, and the defendant's criminal history and ties to the community.²² The arresting agency is authorized to detain such a defendant for up to 24 hours before the state attorney files a motion seeking pretrial

¹⁹ *Mehaffie v. Rutherford*, 143 So.3d 432 at 434 (Fla. 1st DCA 2014). Section 903.286, F.S., authorizes the clerk of the court is to withhold from the return of a cash bond posted on behalf of a criminal defendant sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent.

²⁰ Rule 3.131(a), Fla. R. Crim. Pro.

²¹ Section 907.041(4)(g), F.S., provides that the state attorney has the burden of showing the need for pretrial detention.

²² Section 907.041(4)(d), F.S.

detention.²³ The pretrial detention hearing must be held within five days of the filing by the state attorney of a complaint to seek pretrial detention and the defendant may be detained pending the hearing. The defendant may request a continuance, but the continuance may not be more than five days unless there are extenuating circumstances. The state attorney is entitled to one continuance for good cause.²⁴

For the hearing to determine whether the defendant will be detained pretrial, the defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence without complying with the rules of evidence, but evidence secured in violation of the Constitution is not be admissible. Any testimony provided by the defendant cannot be admitted to prove guilt at any other judicial proceeding, but such testimony may be admitted in an action for perjury, based upon the defendant's statements made at the pretrial detention hearing, or for impeachment.²⁵

The pretrial detention order of the court must be based solely upon evidence produced at the hearing and be justified by findings of fact and conclusions of law. The order must be made in writing or orally on the record within 24 hours of the pretrial detention hearing.²⁶

Violation of Pretrial Release Conditions

A defendant that does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven.²⁷ Section 903.0471, F.S., authorizes the court to, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.²⁸

III. Effect of Proposed Changes:

Bail

The bill amends the purpose of bail provided for in s. 903.046, F.S., to apply to violent criminal defendants, rather than all criminal defendants. Thus, the purpose of bail is limited to ensuring the appearance in court of a violent criminal defendant and protecting the community against danger from the violent criminal defendant.

²³ Section 907.041(4)(e), F.S.

²⁴ Section 907.041(4)(f), F.S.

²⁵ Section 907.041(4)(h), F.S.

²⁶ Section 907.041(4)(i), F.S.

²⁷ See s. 903.26, F.S. Rule 3.131(c)(1), Fla. R. Crim. Pro., further provides that a defendant who willfully fails to appear and breaches a bond is not eligible for recognizance bond. Rule 3.131(c)(2), Fla. R. Crim. Pro., provides that if the defendant fails to appear and is arrested, he or she is not eligible for a recognizance bond or any form of bond that does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Also, s. 903.046(2)(d), F.S., provides that any defendant that has failed to appear on the day of any required court proceeding in the case at issue, but who had later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. But, the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear.

²⁸ This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

The bill adds language in s. 903.046, F.S., providing that there is a presumption that an individual arrested for a nonviolent misdemeanor must be released on nonmonetary conditions pending trial. For this section of the bill, a nonviolent misdemeanor is defined to exclude assault as defined in s. 784.011, F.S.

Pretrial Release Conditions

Currently, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for persons who are granted pretrial release unless the person is charged with a dangerous crime. The bill provides that it is the intent of the Legislature that persons arrested for a nonviolent misdemeanor who do not pose a threat to the safety of the community must be released on nonmonetary conditions while awaiting trial. Thus, s. 907.041, F.S., no longer contains a presumption of release on nonmonetary conditions for any person granted pretrial release.

The bill does not define a nonviolent misdemeanor offense in s. 907.041, F.S.

Pretrial Detention

The bill amends s. 907.041(4)(c), F.S., deleting several of the above-described circumstances that the court can find when making a pretrial detention determination. Specifically, a court can consider certain conditions for a defendant who is charged with driving under the influence manslaughter when determining if he or she poses a threat of harm to the community. The bill removes the following conditions, including that the defendant:

- Was driving with a suspended driver license when the charged crime was committed; and
- Has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34, F.S.

Violation of Pretrial Release Conditions

The bill amends s. 903.0471, F.S., limiting the court's authority to revoke a defendant's bond or pretrial release conditions to only if the court finds probable cause that he or she committed a new violent or dangerous crime while on pretrial release, rather than the probable cause that he or she committed any new offense.

Legislative Findings Supporting Pretrial Release

The legislative intent language found in s. 907.041, F.S., is amended to provide that a defendant who commits a nonviolent misdemeanor offense and who does not pose a risk of threat to the community must be released until adjudication is determined.

The bill also amends the legislative intent language providing that the primary consideration for detaining a defendant is whether the individual presents risk of physical harm to persons.

The bill amends s. 790.065, F.S., correcting cross-reference changes made by the act.

The bill is effective July 1, 2018.

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:

The bill creates a presumption that a person charged with nonviolent misdemeanors is to be released on nonmonetary conditions while awaiting trial. To the extent that this results in more defendants being released that are currently unable to be released from custody pretrial, the bill may result in a positive jail bed impact (i.e. a reduction in the number of jail bed used) and a positive fiscal impact on sheriff's offices who do not have to pay the per diem for such defendants.

Additionally, the bill removes two conditions related to driving offenses that the court can use to make a finding of danger to the community for pretrial detention. To the extent this results in fewer defendants being detained pretrial, the bill will likely result in a positive jail bed impact (i.e. a reduction in the number of jail bed used) and a positive fiscal impact on sheriff's offices who do not have to pay the per diem for such defendants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 903.046, 903.0471, 907.041, and 790.065.

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.
