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1 A bill to be entitled
2 An act relating to conditions of pretrial release;
3 amending s. 901.15, F.S.; providing an exception to
4 warrantless arrest; creating s. 901.1502, F.S.;
5 requiring an officer to issue a notice to appear
6 rather than make a custodial arrest in certain
7 circumstances; requiring persons receiving such
8 notices to appear to be scheduled for a court
9 appearance within a specified time period; amending s.
10 903.046, F.S.; specifying that criminal defendants who
11 are not charged with felony offenses are presumed to
12 be entitled to release without monetary bail or bail
13 with a monetary component to the conditions of their
14 release; requiring such defendants to be released
15 within a specified period; providing requirements
16 before a court may set or modify a condition of
17 pretrial release that includes monetary bail or bail
18 with a monetary component; providing requirements for
19 monetary bail or bail with a monetary component;
20 amending s. 903.047, F.S.; requiring that all pretrial
21 releasees be enrolled in a specified notification
22 system; amending s. 903.0471, F.S.; requiring that an
23 arrest order be issued if the court finds there is
24 probable cause to believe that a defendant on pretrial
25 release committed a specified offense; creating s.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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26 943.0472, F.S.; requiring automatic pretrial release
 27 without money bail for pregnant women in certain
 28 circumstances; amending s. 907.041, F.S.; conforming
 29 provisions to changes made by the act; revising the
 30 factors to be considered in determining whether a
 31 defendant charged with DUI manslaughter poses a threat
 32 of harm to the community for purposes of considering
 33 pretrial detention; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:
 36

37 Section 1. Subsection (1) of section 901.15, Florida
 38 Statutes, is amended to read:

39 901.15 When arrest by officer without warrant is lawful.—A
 40 law enforcement officer may arrest a person without a warrant
 41 when:

42 (1) Except as provided in s. 901.1502, the person has
 43 committed a felony or misdemeanor or violated a municipal or
 44 county ordinance in the presence of the officer. An arrest for
 45 the commission of a misdemeanor or the violation of a municipal
 46 or county ordinance shall be made immediately or in fresh
 47 pursuit.

48 Section 2. Section 901.1502, Florida Statutes, is created
 49 to read:

50 901.1502 Notice to appear in lieu of arrest for certain

51 violations.-

52 (1) A law enforcement officer shall issue a notice to
 53 appear in lieu of making custodial arrest to a person accused of
 54 a traffic violation or a nonviolent second degree misdemeanor
 55 offense if the person:

56 (a) Verifies his or her identity;

57 (b) Poses no obvious threat to the community or any
 58 person; and

59 (c) Has no obvious physical or mental health issues that
 60 pose a risk to his or her own safety.

61 (2) A person who receives a notice to appear under this
 62 section shall be scheduled to appear in court within 21 days
 63 after the date the notice is issued.

64 Section 3. Section 903.046, Florida Statutes, is amended
 65 to read:

66 903.046 Purpose of and criteria for bail determination.-

67 (1) The purpose of a bail determination in criminal
 68 proceedings is to ensure the appearance of the criminal
 69 defendant at subsequent proceedings and to protect the community
 70 against unreasonable danger from the criminal defendant. A
 71 criminal defendant who is not charged with a felony offense is
 72 presumed to be entitled to release without monetary bail or bail
 73 with a monetary component to the conditions of his or her
 74 release.

75 (2) When determining whether to release a defendant on

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76 | bail or other conditions, and what that bail or those conditions
77 | may be, the court shall consider:

78 | (a) The nature and circumstances of the offense charged.

79 | (b) The weight of the evidence against the defendant.

80 | (c) The defendant's family ties, length of residence in
81 | the community, employment history, financial resources, and
82 | mental condition.

83 | (d) The defendant's past and present conduct, including
84 | any record of convictions, previous flight to avoid prosecution,
85 | or failure to appear at court proceedings. However, any
86 | defendant who had failed to appear on the day of any required
87 | court proceeding in the case at issue, but who had later
88 | voluntarily appeared or surrendered, shall not be eligible for a
89 | recognizance bond; and any defendant who failed to appear on the
90 | day of any required court proceeding in the case at issue and
91 | who was later arrested shall not be eligible for a recognizance
92 | bond or for any form of bond which does not require a monetary
93 | undertaking or commitment equal to or greater than \$2,000 or
94 | twice the value of the monetary commitment or undertaking of the
95 | original bond, whichever is greater. Notwithstanding anything in
96 | this section, the court has discretion in determining conditions
97 | of release if the defendant proves circumstances beyond his or
98 | her control for the failure to appear. This section may not be
99 | construed as imposing additional duties or obligations on a
100 | governmental entity related to monetary bonds.

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101 (e) The nature and probability of danger which the
102 defendant's release poses to the community.

103 (f) The source of funds used to post bail or procure an
104 appearance bond, particularly whether the proffered funds, real
105 property, property, or any proposed collateral or bond premium
106 may be linked to or derived from the crime alleged to have been
107 committed or from any other criminal or illicit activities. The
108 burden of establishing the noninvolvement in or nonderivation
109 from criminal or other illicit activity of such proffered funds,
110 real property, property, or any proposed collateral or bond
111 premium falls upon the defendant or other person proffering them
112 to obtain the defendant's release.

113 (g) Whether the defendant is already on release pending
114 resolution of another criminal proceeding or on probation,
115 parole, or other release pending completion of a sentence.

116 (h) The street value of any drug or controlled substance
117 connected to or involved in the criminal charge. It is the
118 finding and intent of the Legislature that crimes involving
119 drugs and other controlled substances are of serious social
120 concern, that the flight of defendants to avoid prosecution is
121 of similar serious social concern, and that frequently such
122 defendants are able to post monetary bail using the proceeds of
123 their unlawful enterprises to defeat the social utility of
124 pretrial bail. Therefore, the courts should carefully consider
125 the utility and necessity of substantial bail in relation to the

126 street value of the drugs or controlled substances involved.

127 (i) The nature and probability of intimidation and danger
128 to victims.

129 (j) Whether there is probable cause to believe that the
130 defendant committed a new crime while on pretrial release.

131 (k) Any other facts that the court considers relevant.

132 (l) Whether the crime charged is a violation of chapter
133 874 or alleged to be subject to enhanced punishment under
134 chapter 874 or reclassification under s. 843.22. If any such
135 violation is charged against a defendant or if the defendant is
136 charged with a crime that is alleged to be subject to such
137 enhancement or reclassification, he or she is not eligible for
138 release on bail or surety bond until the first appearance on the
139 case in order to ensure the full participation of the prosecutor
140 and the protection of the public.

141 (m) Whether the defendant, other than a defendant whose
142 only criminal charge is a misdemeanor offense under chapter 316,
143 is required to register as a sexual offender under s. 943.0435
144 or a sexual predator under s. 775.21; and, if so, he or she is
145 not eligible for release on bail or surety bond until the first
146 appearance on the case in order to ensure the full participation
147 of the prosecutor and the protection of the public.

148 (3) A defendant who has not been charged with a felony
149 offense shall be released without monetary bail or bail with a
150 monetary component to the conditions of his or her release if he

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151 or she is otherwise entitled to pretrial release under
152 subsection (2). Such a defendant shall be released within 48
153 hours after his or her arrest.

154 (4)(a) Before setting or modifying a condition of pretrial
155 release that includes monetary bail or bail with a monetary
156 component, the court shall conduct an inquiry into the
157 defendant's ability to post monetary bail or bail with a
158 monetary component. Such inquiry shall allow the prosecutor,
159 defense counsel, and defendant the opportunity to provide the
160 court with information pertinent to the defendant's ability to
161 post monetary bail or bail with a monetary component. Such
162 information may be provided by proffer and may include
163 statements by the defendant's relatives or other persons who are
164 present at the hearing and have information about the
165 defendant's ability to post monetary bail or bail with a
166 monetary component. All information shall be admissible if it is
167 relevant and reliable, regardless of whether it would be
168 admissible under the rules of evidence applicable at a criminal
169 trial.

170 (b) When the court determines that monetary bail is a
171 necessary condition of pretrial release, the court shall make
172 the following findings and state, together with sufficient
173 supporting facts, on the record in open court, that:

174 1. No other conditions of pretrial release, without
175 monetary bail, will reasonably ensure the defendant's appearance

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176 in court.

177 2. The amount of monetary bail is not oppressive and is
178 considerate of the defendant's financial resources, and the
179 defendant has the present ability to post the amount necessary
180 to secure his or her pretrial release on bail.

181 3. The defendant will comply with the other conditions of
182 pretrial release.

183 (5) When setting bail, there shall be a presumption that
184 any conditions of pretrial release imposed shall be nonmonetary
185 in nature, and the court shall impose the least restrictive
186 conditions or combination of conditions necessary to reasonably
187 ensure the defendant's appearance in court. Such conditions or
188 combination of conditions shall include conditions necessary to
189 ensure that the defendant does not pose a real and present
190 threat to the physical safety of any person. The court shall
191 consider the defendant's social and economic circumstances when
192 setting conditions of pretrial release. The court shall require
193 another hearing if a defendant remains in jail 48 hours after
194 being offered pretrial release on monetary bail.

195 Section 4. Subsection (2) of section 903.047, Florida
196 Statutes, is amended to read:

197 903.047 Conditions of pretrial release.—

198 (2) Upon motion by the defendant when bail is set, or upon
199 later motion properly noticed pursuant to law, the court may
200 modify the condition required by paragraph (1)(b) if good cause

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201 is shown and the interests of justice so require. The victim
202 shall be permitted to be heard at any proceeding in which such
203 modification is considered, and the state attorney shall notify
204 the victim of the provisions of this subsection and of the
205 pendency of any such proceeding. Each defendant released shall
206 be enrolled in e-Notify, the state's court event notification
207 system, to receive notification of upcoming court events.

208 Section 5. Section 903.0471, Florida Statutes, is amended
209 to read:

210 903.0471 Violation of condition of pretrial release.—
211 Notwithstanding s. 907.041, a court may, on its own motion,
212 revoke pretrial release and order pretrial detention if the
213 court finds probable cause to believe that the defendant
214 committed a new crime while on pretrial release. The court shall
215 issue an arrest order if it finds there is probable cause to
216 believe that the defendant on pretrial release committed an
217 offense listed in s. 775.084(1)(b)1.

218 Section 6. Section 943.0472, Florida Statutes, is created
219 to read:

220 943.0472 Pregnant woman; automatic release.—A pregnant
221 woman shall be granted automatic pretrial release without
222 monetary bail until her baby is delivered if she does not pose a
223 flight risk and is not a danger to the community.

224 Section 7. Subsection (1) and paragraphs (a), (b), and (c)
225 of subsection (4) of section 907.041, Florida Statutes, are

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226 amended to read:

227 907.041 Pretrial detention and release.—

228 (1) LEGISLATIVE INTENT.—It is the policy of this state
229 that persons committing serious felony ~~criminal~~ offenses, posing
230 a threat to the safety of the community or the integrity of the
231 judicial process, or failing to appear at trial be detained upon
232 arrest. However, persons found to meet specified criteria shall
233 be released under certain conditions until proceedings are
234 concluded and adjudication has been determined. The Legislature
235 finds that this policy of pretrial detention and release will
236 assure the detention of those persons posing a threat to society
237 while reducing the costs for incarceration by releasing, until
238 trial, those persons not considered a danger to the community
239 who meet certain criteria. It is the intent of the Legislature
240 that the primary consideration be the protection of the
241 community from risk of physical harm to persons.

242 (4) PRETRIAL DETENTION.—

243 (a) As used in this subsection, "dangerous crime" means a
244 felony violation of any of the following:

- 245 1. Arson;
- 246 2. Aggravated assault;
- 247 3. Aggravated battery;
- 248 4. Illegal use of explosives;
- 249 5. Child abuse or aggravated child abuse;
- 250 6. Abuse of an elderly person or disabled adult, or

251 aggravated abuse of an elderly person or disabled adult;
 252 7. Aircraft piracy;
 253 8. Kidnapping;
 254 9. Homicide;
 255 10. Manslaughter;
 256 11. Sexual battery;
 257 12. Robbery;
 258 13. Carjacking;
 259 14. Lewd, lascivious, or indecent assault or act upon or
 260 in presence of a child under the age of 16 years;
 261 15. Sexual activity with a child, who is 12 years of age
 262 or older but less than 18 years of age, by or at solicitation of
 263 person in familial or custodial authority;
 264 16. Burglary of a dwelling;
 265 17. Stalking and aggravated stalking;
 266 18. Act of domestic violence as defined in s. 741.28;
 267 19. Home invasion robbery;
 268 20. Act of terrorism as defined in s. 775.30;
 269 21. Manufacturing any substances in violation of chapter
 270 893;
 271 22. Attempting or conspiring to commit any such crime; and
 272 23. Human trafficking.
 273 (b) A ~~No~~ person charged with a dangerous crime may not
 274 ~~shall~~ be granted nonmonetary pretrial release at a first
 275 appearance hearing; however, the court shall retain the

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276 discretion to release an accused on electronic monitoring or on
277 recognizance bond if the findings on the record of facts and
278 circumstances warrant such a release.

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

284 1. The defendant has previously violated conditions of
285 release and that no further conditions of release are reasonably
286 likely to assure the defendant's appearance at subsequent
287 proceedings;

288 2. The defendant, with the intent to obstruct the judicial
289 process, has threatened, intimidated, or injured any victim,
290 potential witness, juror, or judicial officer, or has attempted
291 or conspired to do so, and that no condition of release will
292 reasonably prevent the obstruction of the judicial process;

293 3. The defendant is charged with trafficking in controlled
294 substances as defined by s. 893.135, that there is a substantial
295 probability that the defendant has committed the offense, and
296 that no conditions of release will reasonably assure the
297 defendant's appearance at subsequent criminal proceedings;

298 4. The defendant is charged with DUI manslaughter, as
299 defined by s. 316.193, and that there is a substantial
300 probability that the defendant committed the crime and that the

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301 defendant poses a threat of harm to the community; conditions
302 that would support a finding by the court pursuant to this
303 subparagraph that the defendant poses a threat of harm to the
304 community include, but are not limited to, any of the following:

305 a. The defendant has previously been convicted of any
306 crime under s. 316.193, or of any crime in any other state or
307 territory of the United States that is substantially similar to
308 any crime under s. 316.193;

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

311 b.e. The defendant has previously been found guilty of, or
312 has had adjudication of guilt withheld for, driving while the
313 defendant's driver license was suspended or revoked in violation
314 of s. 322.34;

315 5. The defendant poses the threat of harm to the
316 community. The court may so conclude, if it finds that the
317 defendant is presently charged with a dangerous crime, that
318 there is a substantial probability that the defendant committed
319 such crime, that the factual circumstances of the crime indicate
320 a disregard for the safety of the community, and that there are
321 no conditions of release reasonably sufficient to protect the
322 community from the risk of physical harm to persons;

323 6. The defendant was on probation, parole, or other
324 release pending completion of sentence or on pretrial release
325 for a dangerous crime at the time the current offense was

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326 committed;

327 7. The defendant has violated one or more conditions of
328 pretrial release or bond for the offense currently before the
329 court and the violation, in the discretion of the court,
330 supports a finding that no conditions of release can reasonably
331 protect the community from risk of physical harm to persons or
332 assure the presence of the accused at trial; or

333 8.a. The defendant has ever been sentenced pursuant to s.
334 775.082(9) or s. 775.084 as a prison releasee reoffender,
335 habitual violent felony offender, three-time violent felony
336 offender, or violent career criminal, or the state attorney
337 files a notice seeking that the defendant be sentenced pursuant
338 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
339 habitual violent felony offender, three-time violent felony
340 offender, or violent career criminal;

341 b. There is a substantial probability that the defendant
342 committed the offense; and

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

346 Section 8. This act shall take effect July 1, 2022.