

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 97 Withholding From the Return of Cash Bonds
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Andrade
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	18 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	12 Y, 1 N	Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Bail is a common monetary condition of pretrial release that requires a defendant, or any person acting on behalf of the defendant, to pay a set sum of money to the court to be released from jail while awaiting further court proceedings. If a defendant released on bail fails to appear before the court for any proceeding where his or her presence is required, the bail money is forfeited and a warrant is issued for the defendant's arrest.

A defendant, or a person acting on the defendant's behalf such as a spouse, family member, or friend, may post the entire bail amount, commonly referred to as a cash bond. Section 903.286(1), F.S., requires the clerk of the court, after the final disposition of a defendant's court proceeding, to withhold from the return of a cash bond posted on behalf of a criminal defendant by any person other than a bail bond agent sufficient funds to pay any:

- Costs of prosecution;
- Costs of representation by the public defender;
- Court fees and costs; and
- Criminal penalties.

If, after payment of such fines, fees, and costs, there are funds remaining from the cash bond, the balance is returned to the defendant or person that posted the cash bond.

Section 903.286(2), F.S., requires all cash bond forms to prominently display a notice that the cash bond is subject to forfeiture if a defendant fails to appear for court, and that the clerk of court, after the final disposition of a defendant's case, is authorized to withhold sufficient funds from the cash bond to pay specified fines, fees, and court costs.

CS/HB 97 amends s. 903.286, F.S., to require the clerk of the court to withhold funds from the return of a cash bond to pay fines, fees, and court costs imposed at the conclusion of a criminal case only when posted by a criminal defendant or his or her spouse. Under the bill, if a defendant's cash bond is posted by a third party such as a non-spouse relative or friend, the clerk of the court may not withhold funds from the cash bond at the conclusion of a defendant's criminal case to pay specified fees and costs associated with the defendant's criminal court case. A bail bond agent will continue to receive the return of the full amount of a bond posted with the court upon the conclusion of a defendant's criminal case, consistent with current law.

The bill amends s. 903.286(2), F.S., to revise the notice provided on all cash bond forms to specify that the clerk of the court may withhold funds posted by the defendant or his or her spouse to pay specified fines, fees, and costs.

The bill may have a negative, yet indeterminate fiscal impact on state and local entities that receive revenue from the fines, fees, and costs imposed at the conclusion of a criminal case.

The bill may also have a negative, yet indeterminate fiscal impact on the clerks of the court expenditures associated with updating cash bond forms to comply with the provisions of the bill. See *Fiscal Comments*.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 grounds. A judge is required to presume that nonmonetary conditions¹ are sufficient for any person to be granted pretrial release who is not charged with a dangerous crime.² Although a court has the authority to impose any number of pretrial release conditions, it must impose conditions of release that require the defendant to refrain from criminal activity and to refrain from contact with a victim, if applicable.³ If a defendant violates pretrial release conditions, he or she may be arrested and held to answer before the court having jurisdiction to try the defendant.⁴

Bail

Bail is a common monetary condition of pretrial release that requires a defendant, or a person acting on behalf of the defendant, to pay a set sum of money to the court to be released from jail while awaiting further court proceedings.⁵ If a defendant released on bail fails to appear before the court for any proceeding where his or her presence is required, the bail money is forfeited and a warrant is issued for the defendant's arrest.

In determining whether to release a defendant on bail and setting a bail amount, a judge must consider:

- 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.
- 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.

¹ 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.

² S. 907.041(3), F.S. "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 persons 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. S. 907.041, F.S.

³ S. 903.047, F.S.

⁴ Ss. 903.0471 and 907.041, F.S.

⁵ S. 903.011, F.S.

- Whether the crime charged is a violation of ch. 874, F.S., relating to criminal gangs or subject to reclassification under s. 843.22, F.S., for committing the offense of traveling across county lines with the intent to commit a burglary.
- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor criminal traffic offense under ch. 316, F.S., is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.⁶

Cash Bond

A defendant, or a person acting on the defendant's behalf such as a spouse, family member, or friend, may post the entire bail amount, commonly referred to as a cash bond.⁷ Section 903.286(1), F.S., requires the clerk of the court, after the final disposition of a defendant's court proceeding, to withhold from the return of a cash bond posted on behalf of a criminal defendant by any person other than a bail bond agent sufficient funds to pay any:

- Costs of prosecution;⁸
- Costs of representation by the public defender;⁹
- Court fees;
- Court costs; and
- Criminal penalties.¹⁰

If, after payment of such fines, fees, and costs, there are funds remaining from the cash bond, the balance is returned to the defendant or person that posted the cash bond.

Section 903.286(2), F.S., requires all cash bond forms to prominently display a notice that the cash bond is subject to forfeiture if a defendant fails to appear for court, and that the clerk of court, after the final disposition of a defendant's case, is authorized to withhold sufficient funds from the cash bond to pay specified fines, fees, and court costs.

Effect of Proposed Changes

CS/HB 97 amends s. 903.286(1), F.S., to require the clerk of the court to withhold funds from the return of a cash bond to pay fines, fees, and court costs imposed at the conclusion of a criminal case only when posted by a criminal defendant or his or her spouse. Under the bill, if a defendant's cash bond is posted by a third party such as a non-spouse relative or friend, the clerk of the court may not withhold funds from the cash bond at the conclusion of a defendant's criminal case to pay specified fees and costs associated with the defendant's criminal court case. A bail bond agent will continue to receive the return of the full amount of a bond posted with the court upon the conclusion of a defendant's criminal case, consistent with current law.

The bill amends s. 903.286(2), F.S., to revise the notice provided on all cash bond forms to specify that the clerk of the court may withhold funds posted by the defendant or his or her spouse to pay specified fines, fees, and costs.

⁶ S. 903.046(2), F.S.

⁷ In the alternative, a defendant may elect to use a criminal surety bail bond executed by a bail bond agent. Generally, to use the services of a bail bond agent, an incarcerated person must pay a nonrefundable fee to the bail bond agent equal to 10 percent of the bond amount set by the court. This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances. S. 903.105, F.S. See also Florida Dept. of Financial Services, *Bail Bonds Overview* <https://www.myfloridacfo.com/division/consumers/understandingcoverage/bailbondsoverview.htm> (last visited Feb. 10, 2022).

⁸ Costs of prosecution are generally set at \$50 for a misdemeanor or criminal traffic offense and \$100 for a felony offense. The court may award a higher amount upon a showing of sufficient proof that higher costs were incurred by the prosecution. Proceeds are deposited into the State Attorneys Revenue Trust Fund. S. 938.27(8), F.S.

⁹ Costs of representation by the public defender include a \$50 initial application fee and a \$50 fee for legal representation for a misdemeanor or criminal traffic offense and \$100 for legal representation for a felony offense. The court may award a higher amount upon a showing of sufficient proof that higher fees or costs were incurred by the public defender. Proceeds are deposited into the Indigent Criminal Defense Trust Fund. Ss. 27.52 and 938.29, F.S.

¹⁰ S. 903.286, F.S. The amount of court fees, court costs, and criminal penalties vary depending on the jurisdiction and the nature of the defendant's criminal charge. The fees, costs, and fines are used to fund the operations of the court system, as well as various other programs related to criminal justice. See ch. 938, F.S.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See *Fiscal Comments*.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See *Fiscal Comments*.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on the clerks of the court who will have to update cash bond forms to comply with the provisions of the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on state and local entities that receive funding from the fines, fees, and costs imposed as part of the sentence in a criminal case. The bill requires the clerk of the court to return the full amount of a cash bond posted by any person other than the defendant or his or her spouse, thereby eliminating the clerk's ability to use the funds from those cash bonds to pay such fines, fees, and costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 8, 2022, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it allowed any person who posts bond on behalf of a criminal defendant, other than his or her spouse, to have the full amount of the bond returned, rather than limiting eligibility for such a return to a charitable bail fund or a bail bond agent.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.