

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 Fiscal Policy

BILL: CS/SB 1534

INTRODUCER: Fiscal Policy Committee and Senator Martin

SUBJECT: Pretrial Release and Detention

DATE: April 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Parker</u>	<u>Yeatman</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1534 amends several statutes related to bail, pretrial detention, and pretrial release.

The bill amends s. 903.011, F.S., to:

- Specify that only a judge may set, reduce, or otherwise alter a defendant’s bail.
- Require the Florida Supreme Court (FSC) to adopt a uniform statewide bond schedule by January 1, 2024, and provides for when an inferior court may establish a local bond schedule.
- Provide circumstances in which a person may not be released before a first appearance hearing.

The bill amends s. 903.047, F.S., to provide that a court must consider s. 903.046(2), F.S., when determining whether to impose nonmonetary conditions in addition to or in lieu of monetary bond, and provides specific nonmonetary conditions that may be imposed.

The bill amends s. 903.0471, F.S., to authorize the court to 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 or violated any other condition of pretrial release in a material respect.

The bill amends s. 907.041, F.S., to:

- Revise the term “dangerous crime” to include DUI manslaughter and BUI manslaughter and trafficking in any controlled substance, extortion, and written threats to kill.

- Provide that if a defendant is arrested for a dangerous crime that is a capital felony, a life felony, or a felony of the first degree, and the court determines there is probable cause to believe the defendant committed the offense, the state attorney, or the court on its own motion shall motion for pretrial detention.
- Provide that a person arrested for a dangerous crime may not be granted nonmonetary pretrial release at first appearance if the court has determined there is probable cause to believe the person has committed the offense.
- Provide that if the court finds a substantial probability that the defendant committed the offense and, based on the defendant's past and present patterns of behavior, consideration of the criteria in s. 903.046, F.S., and any other relevant facts, that no conditions of release or bail will reasonably protect the community from risk of physical harm, ensure the presence of the defendant at trial, or assure the integrity of the judicial process, the court must order pretrial detention.
- Provide that when a person charged with a crime for which pretrial detention could be ordered is arrested, the arresting agency may detain the defendant prior to his or her first appearance.
- Provide that if a motion for pretrial detention is required, the pretrial detention hearing must be held within 5 days after the defendant's first appearance hearing or, if there is no first appearance hearing, within 5 days after the defendant's arraignment.
- Require that if a defendant is released on bail pending a pretrial detention hearing and the defendant uses a surety bond to meet the monetary component, the court must inform the defendant that he or she will not be entitled to a return of the premium on such surety bond.
- Provide that the rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of evidence at the detention hearing.
- Provide that a party may motion for a pretrial detention order to be reconsidered at any time before a defendant's trial if the judge finds that information exists that was not known to the party moving for reconsideration at the time of the pretrial detention hearing.

The bill may have a positive indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective January 1, 2024.

II. Present Situation:

The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.¹ 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.²

¹ 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.*

² See art. I, s. 14, Fla. Const.; See also ss. 903.046 and 907.041, F.S.

Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.³ 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.⁴

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond⁵ executed by a bail bond agent. A cash bond is paid directly to the court for the total amount of the bond, in cash. If the arrestee does not appear after posting a cash bond, the money will be forfeited. After the final disposition of the case, bond money will be refunded, minus any unpaid court fees, costs, and criminal penalties.⁶

Bail Determination

When determining whether to release a defendant on bail or other conditions and what that bail or those conditions may be, the court shall 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, particularly whether the proffered funds, real property, property, or any proposed collateral or bond premium may be linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities. The burden of establishing the noninvolvement in or nonderivative from criminal or other illicit activity of such proffered funds, real property, property, or any proposed collateral or bond premium falls upon the defendant or other person proffering them to obtain the defendant's release.
- 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.

³ Section 903.046(1), F.S.

⁴ *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

⁵ Sections 903.011 and 903.105, F.S.

⁶ Office of Program Policy Analysis and Government Accountability, County Pretrial Release Programs: Calendar Year 2021, Report No. 22-09 at 2 (December 2022) available at <https://oppaga.fl.gov/Documents/Reports/22-09.pdf> (last visited March 21, 2023).

- Whether the crime charged is a violation of ch. 874, F.S., or alleged to be subject to enhanced punishment under ch. 874, F.S., or reclassification under s. 843.22, F.S.⁷
- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S., is required to register as a sexual offender or a sexual predator.⁸
- Any other facts that the court considers relevant.⁹

Pretrial Release

Prior to an indictment, affidavit, or information being filed in a criminal case the court having jurisdiction over the case has jurisdiction to hear and rule on all preliminary motions regarding bail.¹⁰ If a court determines pretrial release is appropriate, it must impose certain conditions on the defendant while on release, including refraining from criminal activity of any kind¹¹ and complying with all conditions of pretrial release ordered by the court.¹²

While there is a presumption in favor of release on nonmonetary conditions for any person granted pretrial release, monetary conditions may be imposed for a person charged with a dangerous crime or if it is determined that such monetary conditions are necessary to assure the presence of the person at trial or at other proceedings, to protect the community from risk of physical harm to persons, or to assure the integrity of the judicial process.¹³ A dangerous crime means 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;

⁷ Section 903.046(2)(1), F.S., If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement or reclassification, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

⁸ Section 903.046(2)(m), F.S. Such offender is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

⁹ Section 903.046(2)(a)-(m), F.S.

¹⁰ Section 903.03(1), F.S.; "Bail" includes any and all forms of pretrial release. Section 903.011(1), F.S.

¹¹ Section 903.047(1)(a), F.S.

¹² Section 903.047(1)(c), F.S.

¹³ Section 907.041(3)(a), F.S.

- 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;¹⁴
- 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.¹⁵

Pretrial Detention

No person charged with a dangerous crime shall be granted nonmonetary pretrial release at a first appearance hearing; however, the court shall retain the discretion to release an accused on electronic monitoring or on recognizance bond if the findings on the record of facts and circumstances warrant such a release.¹⁶ The state attorney has the burden of showing the need of pretrial detention.¹⁷

A judge may order pretrial detention if he or she finds a substantial probability, based on a defendant's past and present patterns of behavior, consideration of the criteria used for determining bail, and any other relevant facts, that any of the following circumstances exist:

- The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;
- 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;

¹⁴ Section 907.041(4)(a)15., F.S.

¹⁵ Section 907.041(4)(a)1.-23., F.S.

¹⁶ Section 907.041(4)(b), F.S.

¹⁷ Section 907.041(4)(g), F.S.

- The defendant is charged with trafficking in controlled substances,¹⁸ that there is a substantial probability that the defendant has committed the offense and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings;¹⁹
- The defendant is charged with DUI manslaughter,²⁰ 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; conditions that would support a finding by the court pursuant to this subparagraph that the defendant poses a threat of harm to the community include, but are not limited to, 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;
 - 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.;
- The defendant poses the threat of harm to the community.²¹
- 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;²²
- The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial; or
- The defendant has ever been sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal,²³ or the state attorney files a notice seeking that the defendant be sentenced as a prison releasee reoffender,

¹⁸ Section 893.02(4), F.S., a "controlled substance" means any substance named or described in Schedules I-V of s. 893.03, F.S. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws. Section 893.03, F.S., Schedule I and II substances are substances that have a high potential for abuse and no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Schedule IV substances have a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III. Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture, or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV.

¹⁹ Section 907.041(4)(c)3., F.S.

²⁰ DUI Manslaughter occurs when a person operates a vehicle and by reason of such operation, causes the death of a person, and at the time of such operation he or she was under the influence of alcoholic beverages, a chemical substance, or a controlled substance to the extent the his or her normal faculties were impaired and he or she had a blood alcohol level of 0.10 percent or higher. *Standard Jury Instructions in Criminal Cases (97-2), 723 So.2d 123, 146-48 (Fla.1998).*

²¹ The court may so conclude if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons.

²² Section 907.041(4)(c)6., F.S.

²³ Section 775.082(9), F.S., and Section 775.084, F.S.

habitual violent felony offender, three-time violent felony offender, or violent career criminal:²⁴

- There is a substantial probability that the defendant committed the offense;²⁵ and
- There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.²⁶

Standard Bond Schedule

Currently judicial circuits may establish their own uniform bond schedule. Such schedules are established so that persons arrested for certain criminal offenses may be released on a bail bond prior to the person's first appearance hearing. When determining the amount of bail, judges should consider the criteria set out in s. 903.046, F.S., and Fla. R. Crim. P. 3.131.²⁷

To improve efficiency and ensure consistency in determining a defendant's bail amount, the Chief Judge of a judicial circuit may issue an administrative order promulgating a "bond schedule." Generally, a bond schedule provides the bail amount required to bond out of jail for a specified crime prior to first appearance.²⁸ A bond schedule also prohibits certain defendants from being released before first appearance due to the severity of the offense committed or the status of the defendant. If a defendant is prohibited from being released before first appearance, his or her bond is set by a judge at a first appearance.

A court is authorized on its own motion to revoke pretrial release and order pretrial detention if a court finds probable cause to believe that a defendant committed a new crime while on pretrial release.

III. Effect of Proposed Changes:

This bill amends several statutes related to bail, pretrial detention, and pretrial release. Specifically, the bill amends s. 903.011, F.S., to:

- Specify that only a judge may set, reduce, or otherwise alter a defendant's bail. Upon motion by a defendant, or on the court's own motion, a court may reconsider the monetary component of a defendant's bail if he or she is unable to post a monetary bond.
- Require the FSC to adopt a uniform statewide bond schedule by January 1, 2024, and annually thereafter. The FSC shall make the revised uniform statewide bond schedule available to each judicial circuit. Additionally, the FSC must evaluate the amount of monetary bond necessary to protect the community from risk of physical harm, to assume the presence of the accused at trial, and to protect the integrity of the judicial process.
- Prohibit a judge of an inferior court from establishing a local bond schedule that sets a lower bond amount than that required by the uniform stateside bond schedule.

²⁴ Section 907.041(4)(c)1.-8.a., F.S.

²⁵ Section 907.041(4)(c)8.b., F.S.

²⁶ Section 907.041(4)(c)8.c., F.S.

²⁷ Twelfth Judicial Circuit, *Bond Schedule for Criminal Proceedings*,

https://www.jud12.flcourts.org/Portals/0/AdminOrders/Section03/13-11.3.pdf?ver=JvXXR9P2G_o2gySEJ1qhsA%3D%3D
(last visited March 21, 2023).

²⁸ *Id.*

- Provide the chief judge of a judicial circuit may petition the FSC for approval of a local bond schedule that sets a lower bond amount than required by the uniform statewide bond schedule. If the Supreme Court reviews and approves such local bond schedule, such schedule may be used for the purpose of setting a defendant's bail before a first appearance hearing or bail determination pending the adoption of a new or revised uniform statewide bond schedule.
- Authorize the chief judge of a judicial circuit to establish a bond schedule that increases the monetary bond applicable to an offense that is included in the uniform statewide bond schedule adopted by the FSC.
- Provide that a person may not be released before his or her first appearance hearing, and a judge must determine the appropriate bail, if any, based on an individualized consideration of the criteria in s. 903.046(2), F.S., if the person meets any of the following criteria:
 - The person was, at the time of arrest for any felony, on pretrial release, probation, or community control in this state or any other state.
 - The person was, at the time of arrest, designated as a sexual offender or sexual predator in this state or any other state.
 - The person was arrested for violating a protective injunction.
 - The person was, at the time of arrest, on release from supervision under s. 947.1405, s. 947.146, s. 947.149, or s. 944.4731, F.S.
 - The person has, at any time before the current arrest, been sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal.
 - The person has been arrested three or more times in the 12 months immediately preceding his or her arrest for the current offense.
 - The offense for which he or she is currently arrested is for committing one or more of specified crimes.

The bill amends s. 903.047, F.S., to provide that a court must consider s. 903.046(2), F.S., when determining whether to impose nonmonetary conditions in addition to or in lieu of monetary bond. Such nonmonetary conditions may include, but are not limited to, requiring a defendant to:

- Maintain employment or, if unemployed, actively seek employment;
- Maintain or commence an educational program;
- Abide by specified restrictions on personal associations, place of residence, or travel;
- Report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;
- Comply with a specified curfew;
- Refrain from possessing a firearm, destructive device, or other dangerous weapon;
- Refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription from a licensed medical practitioner;
- Undergo available medical, psychological, psychiatric, mental health, or substance abuse evaluation and follow all recommendations, including treatment for drug or alcohol dependency, and remain in a specified institution, if required for that purpose;
- Return to custody for specified hours following release for employment, school, or other limited purposes; and

- Comply with any other condition that is reasonably necessary to assure his or her appearance at subsequent proceedings and to protect the community against unreasonable danger of harm.

The bill amends s. 903.0471, F.S., to authorize the court to 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 or violated any other condition of pretrial release in a material respect.

The bill amends s. 907.041, F.S., to:

- Revise the term “dangerous crime” to include DUI manslaughter and BUI manslaughter and trafficking in any controlled substance, extortion, and written threats to kill.
- Provide that a person arrested for a dangerous crime may not be granted nonmonetary pretrial release at first appearance if the court has determined there is probable cause to believe the person has committed the offense.
- Provide that if a defendant is arrested for a dangerous crime that is a capital felony, a life felony, or a felony of the first degree, and the court determines there is probable cause to believe the defendant committed the offense, the state attorney, or the court on its own motion shall motion for pretrial detention.
- Provide that if the court finds a substantial probability that the defendant committed the offense and, based on the defendant’s past and present patterns of behavior, consideration of the criteria in s. 903.046, F.S., and any other relevant facts, that no conditions of release or bail will reasonably protect the community from risk of physical harm, ensure the presence of the defendant at trial, or assure the integrity of the judicial process, the court must order pretrial detention.
- Provide that when a person charged with a crime for which pretrial detention could be ordered is arrested, the arresting agency may detain the defendant prior to his or her first appearance.
- Provide that if a motion for pretrial detention is required, the pretrial detention hearing must be held within 5 days after the defendant’s first appearance hearing or, if there is no first appearance hearing, within 5 days after the defendant’s arraignment.
- Require that if a defendant is released on bail pending a pretrial detention hearing and the defendant uses a surety bond to meet the monetary component, the court must inform the defendant that he or she will not be entitled to a return of the premium on such surety bond.
- Provide that the rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of evidence at the detention hearing.
- Provide that a party may motion for a pretrial detention order to be reconsidered at any time before a defendant’s trial if the judge finds that information exists that was not known to the party moving for reconsideration at the time of the pretrial detention hearing.

The bill is effective January 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may add an administrative burden, on an annual basis, on the FSC and on petitioning chief judges who seek to deviate from the FSC's uniform bond schedule.

The bill may also significantly increase judicial workload in the trial courts as there will likely be a marked increase in the number of:

- Cases on first appearance dockets;
- Pretrial detention hearings; and
- Pretrial release revocation hearings.

The degree to which judicial workload will increase is difficult to quantify because it is not known how many additional first appearance and bond-related hearings will be required. The bill may also result in increased litigation.²⁹

The fiscal impact of this legislation is indeterminate due to the unavailability of data needed to quantifiably establish the anticipated increase in judicial workload as discussed above.

²⁹ Office of the State Courts Administrator, *2023 Judicial Impact Statement* on HB 1627, pg. 8 (on file with the Senate Committee on Criminal Justice).

Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of this bill may impact the case weighting system. The number of case filings using the case weighting system is used to determine the needs for additional judicial resources each year. Any judicial workload increases in the future as a result of this bill will be reflected in the Supreme Court's annual opinion In re: *Certification of Need for Additional Judges*.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 903.011, 903.047, 903.0471, and 907.041.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Fiscal Policy on April 13, 2023:

The committee substitute:

- Removes the language that a chief judge may establish additional nonmonetary conditions to be imposed upon certain defendants.
- Revises the list of circumstances which would prohibit a person from being released before his or her first appearance.
- Adds extortion and written threats to kill to the list of dangerous crimes.
- Removes the requirement that the court hold a detention hearing within 5 days for certain offenses.
- Revises provisions relating to the pretrial detention hearing.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁰ *Id.*