

STORAGE NAME: h3373.cp
DATE: February 28, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3373

RELATING TO: Pretrial Detention

SPONSOR(S): Rep. Tamargo

COMPANION BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends s. 903.046 so that a court may deny bail without regard to the requirements of s. 907.041, F.S. This would allow courts to deny bail for any offense, as long as the court finds that no condition of release can:

- 1) reasonably protect the community from risk of physical harm to persons;
- 2) assure the presence of the accused at trial; or
- 3) assure the integrity of the judicial process.

The bill changes the standard by which courts make their finding from “beyond a reasonable doubt” to “by a preponderance of the evidence.”

The bill eliminates the 90-day cap placed on pretrial detention for defendants who pose a danger to the community.

The bill eliminates the requirement that pretrial detention orders may be issued, only, pursuant to motion by the state attorney. Consequently, pretrial detention orders may issue after any bail hearing, so long as the court makes the required findings of fact.

The bill repeals Rule 3.131 & 3.132 of the Florida Rules of Criminal Procedure.

The bill takes effect upon becoming law, except that Section 3. (repeal of the rules of criminal procedure) takes effect only if this act is passed by 2/3 of the Legislature.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Constitutional Right To Bail

Article I, Section 14 of the Florida Constitution provides for two exceptions for the right to bail. The first exception applies 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. The second exception provided by the Florida Constitution states:

If no conditions of release 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.

The first exception is defined and regulated by caselaw. See, State v. Arthur, 390 So. 2d 717 (Fla. 1980). The second exception is defined and regulated by ss. 903.046 and 907.041, F.S.

Statutory Right To Bail

Section 907.041, F.S. (Pretrial Detention and Release), lists four criteria for denying bail to defendants:

- (b) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that:
1. 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;
 2. 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;
 3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, 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; or
 4. The defendant poses the threat of harm to the community. 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. In addition, the court must find that at least one of the following conditions is present:

- a. The defendant has previously been convicted of a crime punishable by death or life imprisonment.
- b. The defendant has been convicted of a dangerous crime within the 10 years immediately preceding the date of his or her arrest for the crime presently charged.
- c. The defendant is on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time of the current arrest.

Moreover, to qualify for pretrial detention under the statute, the defendant must be charged with a “**dangerous crime**” which 907.041 defines as:

1. Arson;
2. Aggravated assault;
3. Aggravated battery;
4. Illegal use of explosives;
5. Child abuse or aggravated child abuse;
6. Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult;
7. Hijacking;
8. Kidnapping;
9. Homicide;
10. Manslaughter;
11. Sexual battery;
12. Robbery;
13. Carjacking;
14. Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years;
15. 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;
16. Burglary of a dwelling;
17. Stalking and aggravated stalking;
18. Act of domestic violence as defined in s. 741.28; and
19. Attempting or conspiring to commit any such crime; and home-invasion robbery.

Procedural Requirements of 907.046, F.S.

In addition to establishing criteria for denying bail, s. 907.041 includes several procedural requirements, as follows:

- ▶ Arresting agency must notify state attorney of arrest of qualified defendants.
- ▶ Arresting agency may hold the defendant up to 24 hours pending the filing of a motion for pretrial detention by the state attorney.
- ▶ A hearing on the motion for pretrial detention must be held within 5 days, but state attorney allowed one continuance for good cause. A defendant may be held in jail until the hearing.
- ▶ The state attorney has the burden of showing the need for pretrial detention.
- ▶ The defendant may present witnesses and evidence and may cross-examine the state's witnesses.
- ▶ The court may admit relevant evidence, but the Florida Evidence Code does not apply, except that no evidence will be admitted which was procured in violation of the state or federal constitutions.
- ▶ The defendant's testimony may not be used as evidence of guilt at any other proceeding, other than a perjury proceeding, or for impeachment.
- ▶ The court will prepare a pretrial detention order based on the evidence produced at the hearing within 24 hours of the hearing.
- ▶ If denied bail, failure to bring the defendant to trial within 90 days results in his release.

Legislative Intent Regarding Bail

Section 903.046, F.S., sets forth the Legislatures "**purpose of and criteria for bail determination**":

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

(2) 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:

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

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

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

(d) The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings. However, any defendant who previously had willfully and knowingly failed to appear and breached a bond as specified in s. 903.26, but who had voluntarily

appeared or surrendered, shall not be eligible for a recognizance bond; and any defendant who willfully and knowingly failed to appear and breached a bond as specified in s. 903.26 and who was arrested at any time following forfeiture shall not be 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.

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

(f) The source of funds used to post bail.

(g) 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.

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

B. EFFECT OF PROPOSED CHANGES:

Elimination Of Statutory Requirements For Pretrial Detention

The bill amends ss. 903.046 and 907.041, F.S., so that a court may deny bail whenever it finds that no conditions of release can:

- 1) reasonably protect the community from risk of physical harm to persons;
- 2) assure the presence of the accused at trial; or
- 3) assure the integrity of the judicial process.

Thus, the bill expands courts' ability to deny bail through eliminating the restrictions imposed on that ability by s. 907.041, F.S.

Elimination Of Need For Motion For Pretrial Detention

Under current law, bail may not be denied (for offenses other than capital or life felonies) except pursuant to a motion for pretrial detention, filed by the state attorney. Nor may bail be denied except pursuant to a hearing on motion for pretrial to detention. The bill eliminates the requirement that the state file a motion for pretrial detention, if the defendant is already before the court for a bail hearing.

New Standard For Determining Need For Pretrial Detention

Under the current law, any decision by a court to deny bail must be based on evidence "beyond a reasonable doubt." See, Rule 3.132(c), Florida Rules of Criminal Procedure. The bill repeals the Rules which implement pretrial detention (requires 2/3 vote of the Legislature) and provides that pretrial detention orders will be based upon "a preponderance of the evidence."

Elimination Of the Ninety Day Cap

Under the current law, any pretrial detention based upon a defendant's potential harm to the community is limited to 90-days. If the defendant is not brought to trial in that time, he must be released. The bill repeals the 90-day cap placed on pretrial detention.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 903.046 & 907.041, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 903.046 to allow for pretrial detention without motion by the state.

Section 2: Amends s. 907.041 to require pretrial detention upon violation of any condition of pretrial release where the court also believes that no condition of release can assure the safety of the community.

Section 3: Repeals Rules 3.131 & 3.132 of the Florida Rules of Criminal Procedure.

Section 4: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Committee has not met to discuss this bill as of the publishing of this report. Nonetheless, the bill is likely to result in more detainees in county jails; though an accurate prediction of the increase seems impossible to predict.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the bill affects a criminal statute, it is exempt from Article VII, Section 18.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

Constitutional Right To Bail

Prior to January 1, 1983, courts could deny bail for offenses which were punishable by death or by life in prison, only. Article 1, Section 14 of the Constitution guaranteed the right to bail for all other offenses. See, State v. Arthur, 390 So. 2d 717 (Fla. 1980). However, Article I, Section 14 was amended by the citizens of Florida in the election of November 2, 1982 (effective January 1, 1983). The amendment gave Florida courts constitutional authority to deny bail for any offense, if no condition of release could ensure the presence of the defendant at future proceedings, protect the community from harm or ensure the integrity of the judicial process. See, Art. I, Sec. 14.

The effect of the amendment, **which was proposed by the legislature**, was to allow courts to deny bail, in certain situations, to persons accused of offenses other than capital offenses or offenses punishable by life imprisonment. **Section 907.041, Florida Statutes (1983), provides an**

elaborate statutory scheme to implement Article I, section 14, as amended. [e.a.]

Gomez v. Hinkley, 473 So. 2d 809, 810 (Fla. 4th DCA 1985).

Section 907.041 defines what is meant by the constitutional provision which permits denial of bail to "ensure the integrity of the judicial process." Section 907.041(4)(b)(2) permits denial of bail when:

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;

Similarly, in order to deny bail pursuant to the constitutional provision "assur[ing] the presence of the accused at trial, s. 907.041(4)(b)(1)&(3) requires that the defendant have previously violated a condition of release, or the defendant is charged with drug trafficking.

Since 1982, Section 907.041, F.S., has been substantively amended four times, most recently in 1996. But, the judicial power to deny bail for offenses other than capital or life felonies has never existed without the regulation of s. 907.041, F.S.

Repeal of Rules Of Criminal Procedure

The bill's repeal of Rules 3.131 & 3.132 of the Florida Rules of Criminal Procedure requires a two-thirds vote of the House and Senate for passage.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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