

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: Senate Bill 146

SPONSOR: Senator Campbell

SUBJECT: Pretrial Detention and Release

DATE: February 15, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides conditions and procedures by which a defendant's pretrial release may be revoked. The bill provides that the court may revoke a defendant's pretrial release if the defendant is found to have violated a condition of pretrial release, a condition of bond, or by committing a subsequent criminal act or having unauthorized contact with the victim of the original crime.

The bill provides for any time a defendant is in custody following the issuance of an order revoking pretrial release to be credited to any prison sentence the defendant may receive if convicted on the charge for which the detention was ordered. The court may dissolve the pretrial detention order whenever the court finds the basis for detention has been eliminated.

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

II. Present Situation:

Section 903.047, Florida Statutes

Section 903.047, F.S., sets out two specific conditions of pretrial release a court must impose upon a defendant. These conditions are that the defendant refrain from any kind of future criminal activity and refrain from unauthorized contact of any kind with the victim of the crime upon which the release is granted. The statute further provides that, upon motion, the court may modify the condition regarding no victim contact if good cause is shown and the interests of justice require it.

Section 907.041, Florida Statutes

Section 907.041, F.S., sets forth the intent of the Legislature regarding pretrial detention and release, which is that persons who commit serious offenses, which pose a threat to the community or the integrity of the judicial process, or those defendants who fail to appear for trial should be

detained upon arrest. However, those who meet certain criteria should be released under conditions imposed by the court until the criminal case is resolved.

Section 907.041, F.S., specifies that the Rules of Procedure adopted by the Supreme Court shall govern pretrial release determinations.

In Section 907.041, F.S., the Legislature created a presumption in favor of release on nonmonetary conditions unless monetary conditions are necessary to assure the defendant's presence at trial or other proceedings, to assure the integrity of the judicial process, or to protect the community from risk of physical harm to persons.

Under the criteria set forth in s. 907.041, F.S., the court may order pretrial detention of a defendant. The court should consider the following factors in making the determination whether to detain the defendant:

A. Based upon the defendant's past and present patterns of behavior and the criteria set forth in s. 903.046, F.S., listed below:

- the nature and circumstances of the offense;
- 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 criminal history, failures to appear in court, and breaches of bond;
- the nature and probability of potential danger to the community if the defendant is released;
- the source of funds used to post bail;
- whether the defendant is on community supervision pending completion of another sentence or on pretrial release status on another pending case;
- the street value of any controlled substance connected to or involved in the crime
- the nature and probability of intimidation and danger to the victim(s); and
- any other facts the court considers relevant.

B. Whether there is a substantial probability that:

- the defendant has previously violated conditions of release, and no conditions are reasonably likely to assure the defendant's presence at subsequent proceedings;

- the defendant has threatened, injured or intimidated the victim, potential witnesses, jurors or judicial officers, or attempted or conspired to do so;
- the defendant is charged with trafficking in controlled substances and there is a substantial probability he/she committed the offense and no release conditions will reasonably assure the defendant's presence in court; *or*
- the defendant poses a threat of harm to the community, which the court may find if the defendant is presently charged with a dangerous crime (as set forth in s. 907.041 (4)(a), F.S.), which there is a substantial likelihood he/she committed, the facts of the crime indicate a disregard for the safety of the community, and there are no conditions of release which are reasonably sufficient to protect the community from the risk of physical harm; **and at least one of the following conditions is present:**
- the defendant has previously been convicted of a crime punishable by death or life imprisonment **OR**
- the defendant has been convicted of a dangerous crime (s. 907.041(4)(a), F.S.), within 10 years of the arrest date for the pending case **OR**
- the defendant is on community supervision for a prior offense or is on pretrial release status for a previous dangerous crime (s. 907.041 (4)(a), F.S.).

Procedural Requirements of s. 907.041, F.S.

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

- the arresting agency must notify the state attorney of the arrest of qualified defendants.
- the 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 of the filing of the Motion for Pretrial Detention, but a state attorney is allowed one continuance for good cause. A defendant may be held in jail until the hearing. A defendant may request a continuance. No continuance should exceed five days.
- The state attorney has the burden of showing the need for pretrial detention. No standard of proof is specified.
- 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. There is no limitation on the use of hearsay evidence or the weight a court may give it in considering the matter.

- 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 render its ruling based on the evidence produced at the hearing within 24 hours of the hearing.
- If bail is denied, any failure to bring the defendant to trial within 90 days results in the defendant's release.
- Upon conviction, if the defendant is imprisoned, he/she is entitled to credit for time served under the Pretrial Detention Order.

Florida Rule of Criminal Procedure 3.132

Florida Rule of Criminal Procedure 3.132 sets out the procedures to be followed in Pretrial Detention cases. In general the Rule provides for the State Attorney to file a Motion for Pretrial Detention either at First Appearance or at any time prior to trial.

The Motion for Pretrial Detention must be filed in and heard by the court of trial jurisdiction. The hearing on the Motion must be held within five days of its filing or the arrest of the defendant pursuant to the Motion whichever is later. The defendant may only be held ten days pending the hearing unless the defendant's request for a continuance causes the delay. Either the State or the defendant may request a continuance, which shall be no more than five days. The Rule specifies that the Order of Pretrial Detention may not be based solely upon hearsay evidence. The State has the burden of proving the need to detain the defendant prior to trial, pursuant to the criteria set forth in s. 907.041 F.S., beyond a reasonable doubt. A detained defendant must be brought to trial within 90 days or released, unless the defendant or his counsel caused the delay.

Florida Rule of Criminal Procedure 3.131

Florida Rule of Criminal Procedure 3.131 sets forth the procedures to be followed whenever the State has not necessarily filed a Motion for Pretrial Detention. In paragraph (g) the Rule provides that the court may direct the arrest and commitment of a defendant who is at large on bail under certain circumstances which include the court being "satisfied that the bail should be increased or new or additional security is required". Paragraph (h) states "If the defendant applies to be admitted to bail after recommitment, the court that recommitted the defendant shall determine conditions of release, if any, subject to the limitations of paragraph (b)," which sets forth the possible conditions of release.

Recent Case Law Interpretations of Florida's Pretrial Detention Statutes

A conflict has arisen in the interpretation by the appellate courts of the trial court's power to revoke the bond of a defendant and detain them pending resolution of the criminal case.

In *Houser v. Manning*, 719 So.2d 307 (Fla. 3rd DCA 1998) the defendant was at liberty on bond in an armed robbery case. The court had placed certain conditions on the bond, specifically that the defendant not engage in any criminal activity nor possess a firearm. The defendant breached the bond conditions by possessing cannabis and a firearm and was arrested for those offenses. The defendant's bond on the original armed robbery charge was revoked. The defendant argued that although the court had the power to revoke his bond, he was entitled to have a new bond set on the original charge. The trial court declined to set a new bond and was upheld on appeal to the Third District Court.

The defendant in *Houser* unsuccessfully relied on the ruling by the Fourth District Court of Appeals in *Meridian v. Cochran*, 654 So.2d 573 (Fla. 4th DCA 1995) for the proposition that even where a defendant has breached a bond condition he must be granted a new bond unless he meets the criteria set forth in the pretrial detention statute, s. 907.041, F.S. The *Houser* court was not persuaded that the purpose of s. 907.041 F.S., was to "curtail the power of the court to revoke bond where a defendant breaches a bond condition". *Id.* at 310. The *Houser* court explained that s. 907.041, F.S., was enacted to allow courts to deny bond in some cases which had previously been entitled to bond. The court opined that although the State can invoke the pretrial detention statute at any time prior to trial (through Fla. R. Crim. P. 3.132), the statute is "complementary to, and does not replace, the trial court's already-existing power to enforce bond conditions - especially statutory conditions - and to deny further bail where a bond condition has been breached". *Id.* at 311.

Contrary to the Third District Court, the Fourth District Court's view is that once a defendant breaches a bond condition, he is no longer entitled to be free on **that** bond, but the court cannot detain him without bond, and must set a **new** bond unless the conditions of s. 907.041, F.S., are met. In *Paul v. Jenne*, 728 So.2d 1167 (Fla. 4th DCA 1999), the court stated:

"Although we agree with *Houser* that a trial court has the authority to **revoke** a defendant's bond under pretrial release rules allowing arrest and recommitment for bond violations, and pursuant to the court's inherent power to enforce its own orders, we disagree that a trial court has the absolute discretion to **deny** bond unless a defendant meets the criteria for detention without bond under the pretrial detention statutes. By breaching a condition of the bond originally set by the court, a defendant forfeits the right to continued release under the terms of **that** bond. However, the defendant does not forfeit his or her constitutionally guaranteed right to bail altogether; a refusal to admit a defendant to any bail at all must be subject to the limitations of the pretrial detention statute. ... We continue to hold, as we did in *Meridian* and *Metzger*, that the court's authority to deny bond pending trial is circumscribed by the provisions of Florida Statute section 907.041." *Id.* at 1171.

The conflict between the Third and Fourth District Courts of Appeal has been certified to the Florida Supreme Court.

III. Effect of Proposed Changes:

Senate Bill 146 would amend s. 903.047, F.S., to provide a basis for the courts to revoke the bonds of defendants who breach bond conditions, including the provisions of s. 903.047 (1), F.S. The conditions of bond the court must require under s. 903.047 (1), F.S., are that the defendant refrain from any kind of criminal activity while on bond and have no contact of any kind with the victim of the crime of which he/she is accused.

The bill provides that the court may revoke the defendant's bond and order detention pending trial if either condition in s. 903.047 (1), F.S., is breached or if any other condition of release is breached.

The bill would amend s. 907.041, F.S., the pretrial detention statute, to include a provision whereby the courts could revoke a defendant's pretrial release and require pretrial detention, under the amended s. 903.047, F.S., if the court finds the defendant breached a bond condition.

The bill sets forth the procedures to be followed in pretrial release revocations. The procedures mirror, to a large degree, the procedures in Fla. R. Crim. P. 3.132 and s. 907.041, F.S. (set forth in the Present Situation section above). The differences are as follows:

- Senate Bill 146 limits the state attorney to one continuance of the revocation hearing if the defendant is in custody. There is no such limitation on the absolute number of continuances in s. 907.041, F.S., nor the Rule, although there is a common limit of five days' continuance.
- Senate Bill 146 does not provide that the defendant be released after 90 days if he/she has not been brought to trial in that time frame. Both s. 907.041, F.S., and the Rule have such a requirement.
- There is no standard of proof set forth in SB 146, nor in s. 907.041, F.S. Fla. R. Crim. P. 3.132(c)(1) requires the state attorney show the need for pretrial detention beyond a reasonable doubt.
- Senate Bill 146 does not limit the use of hearsay evidence to establish the need for pretrial detention. Fla. R. Crim. P. 3.132 states that hearsay cannot be the only basis of the court's ruling on the matter.

The bill provides that if the court finds that a subsequent event has eliminated the need for pretrial detention, the order may be dissolved.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.