

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1185 w/CS Relating to Bail and Pretrial Release
SPONSOR(S): Ambler, Cantens, and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	6 Y, 0 N	Maynard	De La Paz
2) Public Safety & Crime Prevention	18 Y, 0 N w/CS	Maynard	De La Paz
3) Judiciary		Billmeier	Havlicak
4)			
5)			

SUMMARY ANALYSIS

Currently, all persons detained for criminal offenses have a right to a first appearance before a judge within 24 hours of their arrest. The judge at first appearance is authorized to determine the amount of any monetary bail. The judge present at a first appearance hearing is not necessarily the same judge who issued the *capias* or arrest warrant and set the bond amount. Currently, such bond amounts are reviewable by the first appearance judge, even if the judge issuing the warrant orders that the first appearance judge not review the bond amount or other conditions of pretrial release. HB 1185 w/CS would specifically prohibit the judge at first appearance from reducing the bond amount set by the judge that issued an arrest warrant. The bill provides three exceptions:

- (1) the judge issuing the warrant indicated that the matter of bail may be reconsidered at the first appearance hearing;
- (2) the judge who issued the warrant is also the first appearance judge; or
- (3) the judge at first appearance is the judge to whom the case has been assigned.

HB 1185 w/CS also permits a court to use, in its discretion, an affidavit of a law enforcement officer as probable cause that a defendant on pretrial release has committed a new crime, as opposed to requiring a hearing. This bill requires that judges set a separate bail amount for each offense.

This bill also amends statutes relating to bail bonds. It clarifies that the original appearance bond does not guarantee a defendant's appearance after a defendant enters a guilty or *nolo contendere* plea, after a defendant is adjudicated guilty, after adjudication is withheld, and other situations.

HB 1185 w/CS also prohibits a defendant from being released on pretrial release unless the pretrial release service certifies in writing that it has checked on certain aspects of defendant's background and current situation.

This bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1185c.ju.doc
DATE: April 13, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Currently, all persons detained for criminal offenses have a right to a first appearance before a judge within 24 hours of their arrest.¹ At the first appearance, the judge informs the defendant of the charges against him and provides him with a copy of the complaint.² The court also inquires as to whether the defendant has obtained counsel or qualifies for appointment of representation.³ The first appearance court also conducts a hearing to determine pretrial release.⁴

Every person has the right to pretrial release, unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great.⁵ However, the defendant may be detained if 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 the defendant may be detained.⁶

The judge's responsibility in setting conditions of pretrial release, is to ensure that all three considerations can be satisfied.⁷

The judge present at a first appearance is not necessarily the same judge which issued the capias or arrest warrant and set the bond amount. The setting of a bond amount pursuant to an arrest warrant is a legal ex parte communication between law enforcement and the court. Currently, such bond amounts are reviewable by the first appearance judge, even if the judge issuing the warrant orders that the first appearance judge not review the bond amount or other conditions of pretrial release. Under s. 903.02(2), F.S.:

No judge of a court of equal or inferior jurisdiction may remove a condition of bail or reduce the amount of bond required, unless such judge:

¹ See Fla. R. Crim. P. 3.130(a).

² See Fla. R. Crim. P. 3.130(b).

³ See Fla. R. Crim. P. 3.130(c).

⁴ See Fla. R. Crim. P. 3.130(d) and Fla. R. Crim. P. 3.131(b).

⁵ See Fla. R. Crim. P. 3.131(a).

⁶ See Fla. R. Crim. P. 3.131(a).

⁷ See Fla. R. Crim. P. 3.131(a).

- (a) Imposed the conditions of bail or set the amount of bond required;
- (b) Is the chief judge of the circuit in which the defendant is to be tried;
- (c) Has been assigned to preside over the criminal trial of the defendant; or
- (d) Is the designee of the chief judge and a judge has not yet been assigned to the criminal trial.

This statute would seem to prevent a first appearance judge reviewing the bond amount set by another judge from reducing the defendant's bond. Florida Rule of Criminal Procedure 3.131(d) has similar language to that of the statute.

The Florida Supreme Court specifically addressed the question of whether a judge could prevent the first appearance judge from modifying the bond amount set on the offense for which an arrest warrant had been issued in State v. Norris.⁸ The court held that a judge issuing an arrest warrant may not preclude the first appearance judge from modifying the endorsed bail condition on the arrest warrant.

Bail Bonds

A bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court.

Bail bond agents are licensed and regulated by the Department of Insurance, pursuant to chapter 648, F.S. A bail bond agent may either be a limited surety agent who is appointed by a surety insurance company to execute or countersign bail bonds, or a professional bail bond agent who pledges his or her own funds as security for a bail bond. The chapter provides requirements for licensure of bail bond agents, limits the amount of premium and expenses which can be charged, restricts the types of collateral which can be demanded, and requires that such collateral be returned in a timely manner once the bond has been canceled.

Chapter 903, F.S., sets forth the requirements relating to bail and bail bonds, including all forms of pretrial release. After a defendant has been released on bail, the bail bond agent has the authority to "surrender," or return, the defendant to the custody of the person who would have held the defendant absent the bail.⁹ Ordinarily, a bail bond agent will do this if the bail bond agent believes the defendant is a flight risk or if the collateral provided for bail is discovered to be insufficient. Upon surrender, the official taking custody of the defendant will issue a certificate acknowledging the surrender.¹⁰ The bail bond agent then can present the certificate and bond to the court which will issue an order exonerating the obligors and refunding money or bonds deposited as bail.¹¹

If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited." Within 5 days after forfeiture of a bail bond, the court must mail a notice to the surety agent and the surety company. However, the court may determine, in the interest of justice, that an appearance by the defendant on the same day as required does not warrant forfeiture of the bond and may direct the clerk to set aside the forfeiture. If there is a breach of the bond, the clerk must provide, upon request, a certified copy of the warrant or *capias* to the bail bond agent or surety company.¹²

The forfeiture of a bond must be paid within 60 days of the date the notice to the bail bond agent and surety was filed. State and county officials must deposit the money in the county fine and forfeiture

⁸ 768 So.2d 1070 (Fla 2000).

⁹ See s. 903.20, F.S.

¹⁰ See s. 903.21(1), F.S.

¹¹ See s. 903.21(2), F.S.

¹² See s. 903.26(2), F.S.

fund, and municipal officials must deposit the money in a designated municipal fund. However, after a breach of the bond, the law requires a court to “discharge” a forfeiture (before it is paid) within 60 days upon:

- (a) a determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant’s control;
- (b) a determination that, at the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- (c) surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant.¹³

In addition to the above, the clerk of court must discharge the forfeiture of the bond if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment. The sheriff or the chief correctional officer of the county is required to notify the clerk of court when the defendant is in custody in the county of jurisdiction. The bail bond agent is required to pay the costs associated with returning the defendant to the county of jurisdiction, as a condition of the clerk discharging the forfeiture.¹⁴

In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond. After the judgment is entered, the court is required to furnish the Department of Insurance and the surety company issuing the bond with a certified copy of the judgment. If this judgment is not paid within 35 days, the court provides the Department of Insurance and the sheriff of the county in which the bond was executed, copies of the judgment and a certification that the judgment has not been satisfied. The Department of Insurance receives notice of the judgment and monitors unpaid judgments as a part of its regulation of surety insurance companies. Bail bond agents who have outstanding judgments which are unpaid for 35 days are precluded by law from executing bail bonds. After 50 days of an unpaid judgment, the surety company is precluded by law from issuing bail bonds.¹⁵

The law provides that within 10 days after all of the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled. All of the conditions of a bond are deemed to be satisfied after the defendant has been adjudicated guilty or not guilty.¹⁶

Polakoff Bail Bonds v. Orange County

Section 903.31(1), F.S., states, in part: “An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond.”

Section 903.31(2), F.S. states as follows:

The original appearance bond shall not be construed to guarantee deferred sentences, appearance during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

In Polakoff Bail Bonds v. Orange County,¹⁷ the Florida Supreme Court said the condition of an appearance bond was not satisfied when the trial court accepts a plea of guilty and enters a finding of

¹³ See s. 903.26(5), F.S.

¹⁴ See s. 903.26(8), F.S.

¹⁵ See s. 903.27, F.S.

¹⁶ See s. 903.31, F.S.

guilt, but withholds adjudication and judgment and continues the case for sentencing until the completion of the presentence investigation.¹⁸ The court found that a judgment must be entered in order for the conditions of bond to be satisfied.¹⁹ The court read s. 903.31, F. S., in conjunction with s. 903.045, F.S., which explains the nature of a surety bail bond:

It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.²⁰

The court found that “in the context of a presentence investigation, unless the trial court adjudicates the defendant guilty and provides for the presentence investigation within the judgment, the bond is not satisfied and the defendant must continue to appear at all subsequent proceedings to avoid forfeiture.”²¹

Subsequent to the Polakoff Bail Bonds decision, the Fifth District Court of Appeal found that the Florida Supreme Court’s decision in Polakoff Bail Bonds was limited to the circumstances of a presentence investigation where no judgment had been entered, but reasoned that “because there is never an adjudication of guilt or innocence before a defendant is accepted into a pretrial intervention program, we believe that the legislature must have intended, in cases involving pretrial intervention, an exception to the general rule requiring an adjudication for discharge of a bond.”²²

Effect of Proposed Changes

HB 1185 w/CS creates a new section of ch. 903, F.S., which specifically prohibits the judge at first appearance from reducing the bond amount set by the judge that issues an arrest warrant. The bill provides three exceptions:

- (1) the judge issuing the warrant indicates that the matter of bail may be reconsidered at the first appearance hearing;
- (2) the judge who issued the warrant is also the first appearance judge; or
- (3) the judge at first appearance is the judge to whom the case has been assigned.

This bill also requires that judges set a separate bail amount for each offense. If a defendant is charged with a second or subsequent felony conviction within three years of the date of a prior felony conviction, even if adjudication was withheld, the defendant forfeits his presumption to a nonmonetary release for a new offense.

HB 1185 w/CS amends s. 903.0471, F.S., to clarify that a court to use an affidavit of a law enforcement officer as probable cause that a defendant on pretrial release has committed a new crime. In Parker v. State,²³ the Florida Supreme Court held that s. 903.0471, F.S., which permits a trial judge to revoke

¹⁷ 634 So.2d 1083 (Fla. 1994).

¹⁸ Polakoff Bail Bonds, 634 So. 2d at 1084.

¹⁹ Polakoff Bail Bonds, 634 So. 2d at 1085.

²⁰ Polakoff Bail Bonds, 634 So. 2d at 1085.

²¹ Polakoff Bail Bonds, 634 So. 2d at 1085.

²² Rosenberg Bail Bonds v. Orange County, 663 So.2d 1389, 1392 (Fla. 5th DCA 1995).

²³ 2003 WL 1563567 (Fla. March 27, 2003).

pretrial release based on probable cause without an adversarial hearing did not violate the Florida Constitution. This bill permits a trial judge to rely on an affidavit of a police officer to find probable cause.

Existing law mandates certain conditions of pretrial release. A defendant on pretrial release must refrain from criminal activity and must refrain from contact with the victim. This bill requires a defendant to comply with all conditions of pretrial release.

This bill allows for exoneration of the surety if the State Attorney fails to institute extradition proceedings for a fugitive captured by another jurisdiction if the surety agrees in writing to pay transportation costs.

This bill provides that in any case in which a bond forfeiture has been discharged by the court conditioned on payment of costs and fees, the amount for which judgment may be entered may not exceed the costs and fees.

The bill provides for the cancellation of the bond by the clerk of the court without a court order.

This bill provides that a bond does not guarantee a defendant's conduct or appearance at any time after:

- (1) The defendant enters a plea of guilty or nolo contendere;
- (2) The defendant enters into an agreement for deferred prosecution or agrees to enter a pretrial intervention program;
- (3) The defendant is acquitted;
- (4) The defendant is adjudicated guilty;
- (5) Adjudication of guilt is withheld; or
- (6) The defendant is found guilty by a judge or jury.

This bill would have the effect of overruling the Polakoff Bail Bond holding that a bond is not satisfied when adjudication is withheld.

This bill prohibits a defendant from being accepted for release under nonmonetary conditions under the supervision of a pretrial release service unless the service certifies in writing that the pretrial release service has checked on certain aspects of defendant's background and current situation.

C. SECTION DIRECTORY:

Section 1. Creates s. 903.0465, F.S., relating to a judge's authority to reduce bond.

Section 2. Amends s. 903.0471, F.S., relating to a court's findings of probable cause for violation of pretrial release.

Section 3. Amends s. 903.02, F.S. relating to bail.

Section 4. Amends s. 903.046, F.S. relating to purpose and criteria for bail.

Section 5. Amends s. 903.047, F.S. relating to conditions of pretrial release.

Section 6. Amends s. 903.26, F.S. relating to discharge of forfeiture.

Section 7. Amends s. 903.27, F.S. relating to forfeiture to judgment.

Section 8. Amends s. 903.31, F.S. relating to cancellation of the bond.

Section 9. Amends s. 907.041, F.S. relating to release on nonmonetary conditions.

Section 10. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state government.

2. Expenditures:

The bill does not appear to have a fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local governments.

2. Expenditures:

The bill does not appear to have a fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is not clear what impact this bill will have on the private sector, such as the bail bond industry.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Defendants have a right prior to trial of one accused of a non-capital crime or offense punishable by life imprisonment to a presumption to pretrial release on nonmonetary condition under Florida's Constitution. Article I, Section 14, Constitution of the State of Florida. Under the Federal Constitution, excessive bail may not be required. Article VIII, The Constitution of the United States. Moreover, under the 14th amendment of the United State Constitution, a person is entitled to substantive and procedural due process.

Under Florida law, the first appearance judge usually conducts a hearing with the defendant present either in person or via audiovisual device during which he or she reviews the bond amount as well as probable cause for the offense, and determines whether release is possible. Conversely, the assignment of a bond amount in an arrest warrant is an ex parte hearing between law enforcement

and the court. The defendant has no right to be present. To the extent that a defendant's hearing before a judge with authority to change or modify the bond amount or conditions of release is postponed, it could be argued that the proposed legislation violates Florida's Constitutional provisions regarding the right to pretrial release and detention, as well as Federal Constitutional right to not be held on excessive bail and procedural and substantive due process rights.

However, it is important to note that the requirement that a first appearance hearing occur within 24 hours is not absolute. For example, under Florida Rule of Criminal Procedure 3.132, in exigent circumstances a final order hearing may be held up to 10 days after an initial first appearance hearing pending during which time a defendant may be detained. Moreover, even if the first appearance judge denies pretrial release, a defense attorney may with only three hours notice request a hearing before the trial judge to modify the bond and, failing there, is authorized to seek habeas corpus appellate relief under Florida Rule of Criminal Procedure 3.131(d)(2) and (3). The safeguards included within the Rules, should alleviate any state or federal constitutional concerns.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2003, the Subcommittee on Criminal Justice recommended an amendment to the bill. The recommended amendment made further changes to the statutes dealing with bail and pretrial release. The recommended amendment mandates that judges set a separate bail amount for each offense. Defendants charged with a second or subsequent felony forfeit the right to presumption of release without monetary conditions. The recommended amendment mandates certain conditions of pretrial release, allows for exoneration of the surety if the State Attorney fails to institute extradition proceedings for a fugitive captured by another jurisdiction, and provides that a bond amount is not to exceed unpaid court costs or fees. The recommended amendment provides for the cancellation of the bond and that a bond is not to guarantee deferred sentence, appearance of defendant during or after a pre-sentence investigation, or appearance during appeals. A bond would also not serve to guarantee a defendant's appearance after plea or trial. The recommended amendment prohibits a defendant from being released on pretrial release unless the pretrial release service certifies in writing that has checked on certain aspects of defendant's background and current situation.

On April 2, 2003, the Committee for Public Safety & Crime Prevention voted favorably on the amendment described above as well as several amendments to that amendment. The bill, as reported out of committee, provides that defendants charged with a second or subsequent felony within three years of the date of a prior felony conviction, even if adjudication was withheld, forfeit their presumption to a nonmonetary release for a new offense. The prior amendment would have allowed a court to consider prior arrests for felonies as opposed to convictions. The bill was reported favorably as a committee substitute.