

Committee Substitute for House Bill No. 205

An act relating to pretrial detention; providing a short title; amending s. 907.041, F.S.; revising criteria for pretrial detention; permitting the court to order pretrial detention under specified circumstances when it finds a substantial probability that a defendant committed the charged crime of DUI manslaughter as defined by s. 316.193, F.S., relating to driving under the influence, and that the defendant poses the threat of harm to the community; specifying certain conditions that would support a finding that the defendant poses the threat of harm to the community; deleting requirement for additional court findings for pretrial detention; permitting pretrial detention for any violation of conditions of pretrial release or bond which, in the discretion of the court, supports a finding that no condition of release can reasonably protect the community from physical harm, assure the presence of the accused at trial, or assure the integrity of the judicial process; deleting limitation upon detention period when detention is based on threat of harm to the community; repealing Rules 3.131 and 3.132, Florida Rules of Criminal Procedure, relating to pretrial release and pretrial detention, to the extent of inconsistency with the act; amending s. 903.31, F.S.; providing for cancellation of bond under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the “Trooper Robert Smith Act.”

Section 2. Section 907.041, Florida Statutes, is amended to read:

907.041 Pretrial detention and release.—

(1) **LEGISLATIVE INTENT.**—It is the policy of this state that persons committing serious criminal offenses, posing a threat to the safety of the community or the integrity of the judicial process, or failing to appear at trial be detained upon arrest. However, persons found to meet specified criteria shall be released under certain conditions until proceedings are concluded and adjudication has been determined. The Legislature finds that this policy of pretrial detention and release will assure the detention of those persons posing a threat to society while reducing the costs for incarceration by releasing, until trial, those persons not considered a danger to the community who meet certain criteria. It is the intent of the Legislature that the primary consideration be the protection of the community from risk of physical harm to persons.

(2) **RULES OF PROCEDURE.**—Procedures for pretrial release determinations shall be governed by rules adopted by the Supreme Court.

(3) **RELEASE ON NONMONETARY CONDITIONS.**—It is the intent of the Legislature to create a presumption in favor of release on nonmonetary

conditions for any person who is granted pretrial release. Such person shall be released on monetary conditions only 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, to assure the presence of the accused at trial, or to assure the integrity of the judicial process.

(4) PRETRIAL DETENTION.—

(a) As used in this subsection, “dangerous crime” means any of the following:

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.

(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 any of the following circumstances exists:

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 is charged with DUI manslaughter, as defined by s. 316.193, 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:

a. The defendant has previously been convicted of any crime under s. 316.193, 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;

b. The defendant was driving with a suspended driver's license when the charged crime was committed; or

c. The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver's license was suspended or revoked in violation of s. 322.34;

5.4. 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.~~

6.e. The defendant ~~was 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 offense was committed; or arrest.

7. 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.

(c) When a person charged with a crime for which pretrial detention could be ordered is arrested, the arresting agency shall promptly notify the state attorney of the arrest and shall provide the state attorney with such information as the arresting agency has obtained relative to:

1. The nature and circumstances of the offense charged;
2. The nature of any physical evidence seized and the contents of any statements obtained from the defendant or any witness;
3. The defendant's family ties, residence, employment, financial condition, and mental condition; and
4. The defendant's past conduct and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.

(d) When a person charged with a crime for which pretrial detention could be ordered is arrested, the arresting agency may detain such defendant, prior to the filing by the state attorney of a motion seeking pretrial detention, for a period not to exceed 24 hours.

~~(e) The court shall order detention only after a pretrial detention hearing.~~ The pretrial detention hearing shall be held within 5 days of the filing by the state attorney of a complaint to seek pretrial detention. The defendant may request a continuance. No continuance shall be for longer than 5 days unless there are extenuating circumstances. The defendant may be detained pending the hearing. The state attorney shall be entitled to one continuance for good cause.

(f) The state attorney has the burden of showing the need for pretrial detention.

(g) The defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence without complying with the rules of evidence, but evidence secured in violation of the United States Constitution or the Constitution of the State of Florida shall not be admissible. No testimony by the defendant shall be admissible to prove guilt at any other judicial proceeding, but such testimony may be admitted in an action for perjury, based upon the defendant's statements made at the pretrial detention hearing, or for impeachment.

(h) The pretrial detention order of the court shall be based solely upon evidence produced at the hearing and shall contain findings of fact and conclusions of law to support it. The order shall be made either in writing or orally on the record. The court shall render its findings within 24 hours of the pretrial detention hearing.

~~(i) If ordered detained pending trial pursuant to subparagraph (b)4., the defendant may not be held for more than 90 days. Failure of the state to bring the defendant to trial within that time shall result in the defendant's release from detention, subject to any conditions of release, unless the trial delay was requested or caused by the defendant or his or her counsel.~~

~~(i)(j)~~ A defendant convicted at trial following the issuance of a pretrial detention order shall have credited to his or her sentence, if imprisonment is imposed, the time the defendant was held under the order, pursuant to s. 921.161.

~~(j)(k)~~ The defendant shall be entitled to dissolution of the pretrial detention order whenever the court finds that a subsequent event has eliminated the basis for detention.

Section 3. Rules 3.131 and 3.132, Florida Rules of Criminal Procedure, are hereby repealed to the extent that they are inconsistent with this act.

Section 4. Section 903.31, Florida Statutes, is amended to read:

903.31 Canceling the bond.—

(1) Within 10 business days after the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled and, if the surety has attached a certificate of cancellation to the original bond, shall furnish an executed certificate of cancellation to the surety without cost. An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond. The original appearance bond shall expire 36 months after such bond has been posted for the release of the defendant from custody. This subsection does not apply to cases in which a bond has been declared forfeited.

(2) 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.

(3) In any case where no formal charges have been brought against the defendant within 365 days after arrest, the court shall order the bond canceled unless good cause is shown by the state.

Section 5. This act shall take effect October 1, 2000, except that section 3 shall take effect only if this act is passed by the affirmative vote of two-thirds of the membership of each house of the Legislature.

Approved by the Governor June 6, 2000.

Filed in Office Secretary of State June 6, 2000.