

Committee Substitute for House Bill No. 607

An act relating to pretrial release; amending s. 903.046, F.S.; revising criteria for bail determination; amending s. 907.041, F.S.; prohibiting persons charged with dangerous crimes from being placed on pretrial release on nonmonetary conditions at first appearance hearings; providing criteria for pretrial release on nonmonetary conditions; creating s. 903.0471, F.S.; authorizing a court to order pretrial detention for persons on pretrial release who commit new crimes under certain circumstances; amending s. 903.26, F.S.; revising time period for bond forfeiture payment and notice; repealing Rules 3.131 and 3.132, Florida Rules of Criminal Procedure, relating to pretrial release and pretrial detention, to the extent those rules are inconsistent with this act; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) of section 903.046, Florida Statutes, is amended, present paragraph (j) of that subsection is redesignated as paragraph (k), and a new paragraph (j) is added to that subsection to read:

903.046 Purpose of and criteria for bail determination.—

(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:

(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 on the day of any required court proceeding in the case at issue and breached a bond as specified in s. 903.26~~, but who had later voluntarily appeared or surrendered, shall not be eligible for a recognizance bond; and any defendant who willfully and knowingly failed to appear on the day of any required court proceeding in the case at issue and breached a bond as specified in s. 903.26 and who was later 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. Notwithstanding anything in this section, the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear. This section may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

(j) Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.

Section 2. Subsections (3) and (4) of section 907.041, Florida Statutes, are amended to read:

907.041 Pretrial detention and release.—

(3) RELEASE ON NONMONETARY CONDITIONS.—

(a) 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 unless such person is charged with a dangerous crime as defined in subsection (4). 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.

(b) No person shall be released on nonmonetary conditions under the supervision of a pretrial release service, unless the service certifies to the court that it has investigated or otherwise verified:

1. The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;

2. The accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings; and

3. Other facts necessary to assist the court in its determination of the indigency of the accused and whether she or he should be released under the supervision of the service.

(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) 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.

~~(c)~~(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.

(d)(e) 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.

(e)(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.

(f)(e) The court shall order detention only after a pretrial detention hearing. The 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.

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

(h)(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.

(i)(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.

(j)(i) If ordered detained pending trial pursuant to subparagraph (c)4. (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.

(k)(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.

(l)(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. Section 903.0471, Florida Statutes, is created to read:

903.0471 Violation of condition of pretrial release.—Notwithstanding s. 907.041, a court may, on its own motion, 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.

Section 4. Subsections (2) and (3) of section 903.26, Florida Statutes, are amended to read:

903.26 Forfeiture of the bond; when and how directed; discharge; how and when made; effect of payment.—

(2)(a) If there is a breach of the bond, the court shall declare the bond and any bonds or money deposited as bail forfeited. The clerk of the court shall mail a notice to the surety agent and surety company in writing within 5 days of the forfeiture. A certificate signed by the clerk of the court or the clerk's designee, certifying that the notice required herein was mailed on a specified date and accompanied by a copy of the required notice, shall constitute sufficient proof that such mailing was properly accomplished as indicated therein. If such mailing was properly accomplished as evidenced by such certificate, the failure of the surety agent, of a company, or of a defendant to receive such mail notice shall not constitute a defense to such forfeiture and shall not be grounds for discharge, remission, reduction, set aside,

or continuance of such forfeiture. The forfeiture shall be paid within 60 35 days of the date the notice was mailed.

(b) Failure of the defendant to appear at the time, date, and place of required appearance shall result in forfeiture of the bond. Such forfeiture shall be automatically entered by the clerk upon such failure to appear, and the clerk shall follow the procedures outlined in paragraph (a). However, the court may determine, in its discretion, 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 the court may direct the clerk to set aside any such forfeiture which may have been entered. Any appearance by the defendant later than the required day constitutes forfeiture of the bond, and the court shall not preclude entry of such forfeiture by the clerk.

(c) If there is a breach of the bond, the clerk shall provide, upon request, a certified copy of the warrant or capias to the bail bond agent or surety company.

(3) Sixty ~~Thirty-five~~ days after the forfeiture notice has been mailed:

(a) State and county officials having custody of forfeited money shall deposit the money in the county fine and forfeiture fund;

(b) Municipal officials having custody of forfeited money shall deposit the money in a designated municipal fund;

(c) Officials having custody of bonds as authorized by s. 903.16 shall transmit the bonds to the clerk of the circuit court who shall sell them at market value and disburse the proceeds as provided in paragraphs (a) and (b).

Section 5. Rules 3.131 and 3.132, Florida Rules of Criminal Procedure, are repealed to the extent that the rules are inconsistent with this act.

Section 6. This act shall take effect upon becoming a law, except that section 5 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 2, 2000.

Filed in Office Secretary of State June 2, 2000.