

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 24-03 Pretrial Detention Hearings

SPONSOR(S): Judiciary Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	15 Y, 6 N	Padgett	Kramer

SUMMARY ANALYSIS

Under article I, section 14 of the Florida Constitution, “[u]nless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. 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 Florida Rules of Criminal Procedure govern the procedure in all criminal proceedings in state courts. Rule 3.131, mirrors the right to bail as provided in the Florida Constitution. In *State v. Arthur*, the Florida Supreme Court (FSC) held that, to preclude a defendant who is charged with a capital offense or offense punishable by life imprisonment from being released on bail, the state attorney must present some evidence in addition to the information or indictment that establishes that the defendant’s proof of guilt is evident or the presumption is great, which is a *higher* standard than what is necessary to prove a defendant guilty at trial. The FSC specified in *Arthur* that such evidence could be presented in the form of hearsay, including transcripts or affidavits and other evidence relied upon by the grand jury or state attorney in charging the crime. “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

For cases where a defendant is either *not* charged with a capital offense or an offense punishable by life imprisonment or where the state attorney elects to file a motion for pretrial detention under s. 907.041, F.S., Rule 3.132, provides procedures that a court must follow. Rule 3.132 generally mirrors the statutory language of s. 907.041, F.S., however, it differs in two ways: by requiring the state attorney to show the need for pretrial detention beyond a reasonable doubt, and by prohibiting a final order of pretrial detention from being based exclusively on hearsay evidence. The FSC has not amended Rule 3.132 since the Legislature significantly modified the law relating to pretrial detention in the 2023 session. The current hearsay prohibition in Rule 3.132, coupled with the requirement for mandatory pretrial detention hearings in s. 907.041(5)(d), F.S., that went into effect on January 1, 2024, may be interpreted to require a state attorney to subpoena victims, witnesses, and law enforcement officers to appear at a pretrial hearing and be subjected to cross-examination at such a hearing.

Thus, while a court may rely solely on hearsay evidence to meet the higher standard for detention of “proof of guilt is evident or the presumption great” under Rule 3.131, it may not be able to do so to meet the “beyond a reasonable doubt” standard under Rule 3.132 for a motion for pretrial detention under s. 907.041, F.S.

PCB JDC 24–03 amends s. 907.041, F.S., to authorize a court to base an order of pretrial detention solely on hearsay. As such, the bill aligns the standard for determining pretrial detention based on hearsay evidence under s. 907.041, F.S., with the standard for determining pretrial detention under the Florida Constitution and Rule. 3.131, and ensures that victims and other witnesses are not required to appear in person at pretrial detention hearings.

The bill changes the evidentiary requirements for a pretrial detention hearing, but does not affect the requirement to hold such a hearing, the standard of proof at such a hearing, or the time frame in which the hearing must be conducted. As such, the bill may have an indeterminate fiscal impact on state and local government expenditures.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under article I, section 14 of the Florida Constitution, “[u]nless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. 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.”

Bail

After a person has been arrested, he or she must appear before a judge within 24 hours of arrest, which is known as a “first appearance.”¹ At a first appearance, a judge advises a defendant of the charges for which he or she was arrested, determines whether there is probable cause that a defendant committed such an offense, and advises a defendant of specified rights.² If a judge determines that probable cause exists, the judge then determines whether a defendant is entitled to pretrial release. A judge may grant pretrial release either by setting a specified bail amount or releasing the defendant on his or her own recognizance.³

Pretrial Detention

Discretionary Motion for Pretrial Detention

Under s. 907.041, F.S., upon a motion by the state attorney, the court may order pretrial detention if it finds a substantial probability, based on a defendant’s past and present patterns of behavior, consideration of the criteria used for determining bail, and any other relevant facts, that any of the following circumstances exist:

- 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;
- 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;
- The defendant is charged with trafficking in controlled substances under s. 893.135, F.S., there is a substantial probability that the defendant has committed the offense, and no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings;
- The defendant is charged with DUI manslaughter, there is a substantial probability that the defendant committed the crime, and the defendant poses a threat of harm to the community;
- The defendant poses the threat of harm to the community;⁴
- The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime⁵ at the time the current offense was committed;

¹ Fla. R. Crim. P. 3.130.

² *Id.*

³ Fla. R. Crim. P. 3.131.

⁴ A court may conclude a defendant poses the threat of harm to the community if the defendant is charged with a dangerous crime, there is a substantial probability that the defendant committed such crime, the factual circumstances of the crime indicate a disregard for the safety of the community, and there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. S. 907.041(5)(c)5., F.S.

⁵ A “dangerous crime” includes: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter including DUI manslaughter and BUI manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; 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; burglary of a dwelling;

- 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; or
- The defendant:
 - Has previously been sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;
 - There is a substantial probability that the defendant committed the offense; and
 - There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.⁶

Mandatory Motion for Pretrial Detention

In 2023, the Legislature enacted several changes to bail and pretrial detention proceedings in s. 907.041, F.S., which went into effect on January 1, 2024.⁷ One of the more significant changes required the state attorney or the court, on its own motion, to motion for pretrial detention if a defendant is arrested for a dangerous crime that is a capital felony,⁸ a life felony,⁹ or a first degree felony¹⁰ and the court determines there is probable cause to believe that the defendant committed the offense.¹¹ A judge *must* order pretrial detention if he or she finds a substantial probability that the defendant committed such an offense and, based on the defendant's past and present patterns of behavior, consideration of the criteria used for determining bail, and any other relevant facts, the court finds that no conditions of release or bail will reasonably protect the community from risk of physical harm, ensure the presence of the defendant at trial, or assure the integrity of the judicial process.¹²

Pretrial Detention Procedures

In a pretrial detention hearing, the defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses.¹³ The rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of evidence in pretrial detention proceedings however, evidence that was secured in violation of the United States Constitution or Florida Constitution is inadmissible.¹⁴ If a defendant chooses to testify at a pretrial detention hearing, his or her statements are not admissible to prove guilt in any other criminal proceeding other than in an action for perjury or for impeachment purposes.¹⁵ In both a discretionary and mandatory motion for pretrial detention, the state attorney has the burden of showing the need for pretrial detention.¹⁶

If a defendant is arrested for a "dangerous crime" that requires a court or a state attorney to file a motion for pretrial detention, such pretrial detention hearing must be held within five days of a defendant's first appearance hearing or, if there is no first appearance hearing, within five days of the

stalking and aggravated stalking; an act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; an act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; human trafficking; trafficking in dangerous fentanyl or fentanyl analogues; extortion; or written threats to kill. S. 907.041(5)(a), F.S.

⁶ S. 907.041(5)(c), F.S.

⁷ See ch. 2023-27, Laws of Fla.

⁸ A capital felony is punishable by death or mandatory life imprisonment. S. 775.082, F.S.

⁹ A life felony is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment and a \$15,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁰ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹¹ S. 907.041(5)(d), F.S.

¹² *Id.*

¹³ S. 907.041(5)(i), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S. 907.041(5)(h), F.S.

defendant's arraignment.¹⁷ If the state attorney files a discretionary motion for pretrial detention, the pretrial detention hearing must be held within five days after the filing of the motion for pretrial detention.¹⁸

Any party may file a motion for reconsideration of a pretrial detention order at any time before a defendant's trial if the judge finds that information exists that was not known to the party moving for reconsideration at the time of the pretrial detention hearing if such information has a material bearing on determining whether there are conditions of release or bail that will reasonably assure the appearance of the defendant as required and the safety of any other person and the community from harm.¹⁹

Florida Rules of Criminal Procedure

Rule 3.131

The Florida Rules of Criminal Procedure govern the procedure in all criminal proceedings in state courts. Rule 3.131, mirrors the right to bail under article I, section 14 of the Florida Constitution, and provides every person the right to pretrial release on reasonable conditions unless:

- He or she is charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great; or
- 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.²⁰

In *State v. Arthur*, the Florida Supreme Court (FSC) held that, to preclude a defendant who is charged with a capital offense or offense punishable by life imprisonment from being released on bail, the state attorney must present some evidence in addition to the information or indictment that establishes that the defendant's proof of guilt is evident or the presumption is great, which is a *higher* standard²¹ than what is necessary to prove a defendant guilty at trial.²² The FSC specified in *Arthur* that such evidence could be presented in the form of hearsay, including transcripts or affidavits and other evidence relied upon by the grand jury or state attorney in charging the crime.²³ "Hearsay" is a statement, other than one made by the declarant²⁴ while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.²⁵

Rule 3.132

For cases where a defendant is either *not* charged with a capital offense or an offense punishable by life imprisonment, or where the state attorney elects to file a motion for pretrial detention under s. 907.041, F.S., Rule 3.132, provides procedures that a court must follow.²⁶ Rule 3.132 generally mirrors the statutory language of s. 907.041, F.S., however, Rule 3.132, differs in two ways: by requiring the state attorney to show the need for pretrial detention beyond a reasonable doubt, and by prohibiting a final order of pretrial detention from being based exclusively on hearsay evidence.²⁷ The FSC has not amended Rule 3.132 since the Legislature significantly modified the law relating to pretrial detention in the 2023 session. The current hearsay prohibition in Rule 3.132, coupled with the requirement for mandatory pretrial detention hearings in s. 907.041(5)(d), F.S., that went into effect on January 1,

¹⁷ S. 907.041(5)(g), F.S. Generally, arraignment is a defendant's first court appearance after first appearance. At arraignment, a defendant is formally advised of charges filed by the State and advised of specified rights.

¹⁸ *Id.*

¹⁹ S. 907.041(5)(j), F.S.

²⁰ Fla. R. Crim. P. 3.131(a).

²¹ "...the degree of proof sufficient to deny an accused the right to bail in a capital case under our Constitution, to-wit, proof that guilt is evident or the presumption of guilt is great is actually a greater degree of proof than that which is required to establish guilt merely to the exclusion of a reasonable doubt." *State v. Williams*, 87 So. 2d 45 (Fla. 1956). See also *Russell v. State*, 71 So. 27 (Fla. 1916).

²² *State v. Arthur*, 390 So. 2d 717, 720 (Fla. 1980); *Preston v. Gee*, 133 So. 3d 1218 (Fla. 2d DCA 2014).

²³ *Id.*

²⁴ A "declarant" is a person who makes a statement. S. 90.801(1)(a), F.S.

²⁵ S. 90.801(1)(b), F.S.

²⁶ Fla. R. Crim. P. 3.132.

²⁷ Fla. R. Crim. P. 3.132(c)(1).

2024,²⁸ may be interpreted to require a state attorney to subpoena victims, witnesses, and law enforcement officers to appear at a pretrial hearing and be subjected to cross-examination at such a hearing.²⁹

Thus, while a court may rely solely on hearsay evidence to meet the higher standard for detention of “proof of guilt is evident or the presumption great” under Rule 3.131, it may not be able to do so to meet the “beyond a reasonable doubt” standard under Rule 3.132 for a motion for pretrial detention under s. 907.041, F.S.

Effect of Proposed Changes

PCB JDC 24–03 amends s. 907.041, F.S., to authorize a court to base an order of pretrial detention solely on hearsay. As such, the bill aligns the standard for determining pretrial detention based on hearsay evidence under s. 907.041, F.S., with the standard for determining pretrial detention under the Florida Constitution and Rule 3.131, and ensures that victims and other witnesses are not required to appear in person at pretrial detention hearings.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 907.041, F.S., relating to pretrial detention and release.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill changes the evidentiary requirements for a pretrial detention hearing, but does not affect the requirement to hold such a hearing, the standard of proof at such a hearing, or the time frame in which the hearing must be conducted. As such, the bill may have an indeterminate fiscal impact on state and local government expenditures.

²⁸ *Supra*, note 7.

²⁹ The Criminal Procedure Rules Committee is currently in the process of revising Rule 3.132. The most recent draft of this revision retains the prohibition on a court basing a final order of pretrial detention exclusively on hearsay evidence. Criminal Procedure Rules Committee Agenda, January 26, 2024.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

The confrontation clause under the Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him.”³⁰ Thus, a defendant in a criminal proceeding has the right to physically face witnesses who are testifying against him or her and the right to conduct a cross-examination of such witnesses.³¹ As such, the confrontation clause generally limits the admission of hearsay in criminal proceedings since such hearsay is made out-of-court and the defendant does not have an opportunity to conduct a cross-examination of the declarant. However, the confrontation clause is a right that attaches at trial and does *not* apply to other ancillary criminal proceedings, such as a pretrial detention hearing.³² In *Godwin v. Johnson*, the Florida First District Court of Appeal explicitly held that the confrontation clause did not apply in a pretrial detention proceeding.³³

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

³⁰ U.S. Const. amend VI.

³¹ *Pennsylvania v. Ritchie*, 480 U.S. 39, 51 (1987).

³² *Barber v. Page*, 390 U.S. 179 (1968). *Bruton v. United States*, 391 U.S. 123 (1968).

³³ *Godwin v. Johnson*, 957 So. 2d 39 (Fla. First DCA 2007).