

The Florida House of Representatives

Justice Council

Allan G. Bense
Speaker

Bruce Kyle
Chair

August 29, 2005

Florida Supreme Court
500 S. Duval St.
Tallahassee, Florida 32399

Re: IN RE: FLORIDA RULES OF CRIMINAL PROCEDURE 3.131 AND 3.132, CASE NO. SCO5-739

May It Please the Court;

Pursuant to the Florida Supreme Court's invitation to the Legislature to file comments addressing policy concerns of the Legislature by enacting section 907.041(b) (Chapter 2000-178), the following comments are submitted. Although this letter can not and does not purport to reflect the will of the 2000 Legislature or speak for the Legislature collectively, it is submitted to assist the Court by describing the policy objective of the House bill sponsor, Rep. Gaston Cantens, after consultation with him. Since the entire rule has been published for comment and there were other significant changes made to section 907.041 in Chapter 2000-229 (also by Rep. Cantens) which have not been reflected in Rule 3.132, this letter will also address a needed change with respect to that modification to the pretrial detention statute.

The amendment contained in Chapter 2000-178 to sections 907.041(3)(a)(b) and (4)(b) are interrelated. The key component to these amendments were the requirement under (3)(b) which had two objectives. First, to create an obligation on the part of pretrial release services to investigate and verify all of the circumstances and factors expressly provided in statute. Pretrial release services would satisfy this obligation by certifying to the court that it had completed the statutorily prescribed inquiry. Second, to prohibit the release of individuals charged with dangerous crimes on nonmonetary conditions unless the court had the benefit of the statutorily required certification by pretrial release services in reaching an appropriate pretrial release determination. Subsection, (4)(b) was created to address a known problem in some circuits of inadequate or incomplete investigations by pretrial release services due to the limited time period between a defendant's arrest and his or her first appearance hearing. It was specifically targeted at persons charged with dangerous crimes to ensure a complete investigation by pretrial release services and an informed decision by the first appearance judge. It should be emphasized that

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the trial judge still had discretion, under the same subsection, to issue a recognizance bond or order electronic monitoring at first appearance if the circumstances warranted such a release.

With respect to the other amendment to s. 907.041 by Chapter 2000-229 requiring a rule modification, Rule 3.132(d) contains a 90 day limit on pretrial detention. This provision should be deleted from the rule since it was placed in the rule to comply a statutory time limit which has now been deleted. This statutory provision was removed as a matter of public policy due to the public safety reasons for seeking to securely hold a defendant without bond, and the fact that the provision is unnecessary given the ability of a defendant to demand a speedy trial within 60 days under the current rule of criminal procedure.

Attached to these comments are suggested changes to the current rules which are offered for the Court's consideration as an example of language that may be used to facilitate the intention of the bill sponsor.

Thank you for the opportunity to provide these comments and for your careful consideration.

Respectfully Submitted;

David De La Paz
Council Director on behalf of

Bruce Kyle, Chair
Justice Council

Rule 3.131 Pretrial Release

a) 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, 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.

(b) Hearing at First Appearance—Conditions of Release.

(1) Unless the state has filed a motion for pretrial detention pursuant to rule 3.132, the court shall conduct a hearing to determine pretrial release. For the purpose of this rule, bail is defined as any of the forms of release stated below. There is a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless the person is charged with, and probable cause is found for, a dangerous crime as defined in s. 907.041(4). The judicial officer shall impose the first of the following conditions of release that will 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; or, if no single condition gives that assurance, shall impose any combination of the following conditions:

(A) personal recognizance of the defendant;

(B) execution of an unsecured appearance bond in an amount specified by the judge;

(C) placement of restrictions on the travel, association, or place of abode of the defendant during the period of release;

(D) placement of the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(E) execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; provided, however, that any criminal defendant who is required to meet monetary bail or bail with any monetary component may satisfy the bail by providing an appearance bond; or

(F) any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(2) The judge shall at the defendant's first appearance consider all available relevant factors to determine what form of release is necessary to assure the defendant's appearance. If a monetary bail is required, the judge shall determine the amount.

(3) In determining whether to release a defendant on, nonmonetary conditions, bail or other conditions, and what that bail or those conditions may be, the court may consider the nature and circumstances of the offense charged and the penalty provided by law; 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 any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the court considers relevant. In addition, if the court is considering releasing a defendant charged with a dangerous crime as defined in s. 907.041(4) on nonmonetary conditions under the supervision of a pretrial release service, the court must have received and must consider the certification of the pretrial release service required pursuant to s. 907.041(3)(b).

(4) All information provided by a defendant in connection with any application for or attempt to secure bail, to any court, court personnel, or individual soliciting or recording such information for the purpose of evaluating eligibility for or securing bail for the defendant, under circumstances such that the defendant knew or should have known that the information was to be used in connection with an application for bail, shall be accurate, truthful, and complete, without omissions, to the best knowledge of the defendant. Failure to comply with the provisions of this subdivision may result in the revocation or modification of bail. However, no defendant shall be compelled to provide information regarding his or her criminal record.

(5) Information stated in, or offered in connection with, any order entered pursuant to this rule need not strictly conform to the rules of evidence.

(c) Consequences of Failure to Appear.

(1) Any defendant who willfully and knowingly fails to appear and breaches a bond as specified in section 903.26, Florida Statutes, and who voluntarily appears or surrenders shall not be eligible for a recognizance bond.

(2) Any defendant who willfully and knowingly fails to appear and breaches a bond as specified in section 903.26, Florida Statutes, and who is arrested at any time following forfeiture shall not be eligible for a recognizance bond or any form of bond that 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.

(d) Subsequent Application for Setting or Modification of Bail.

(1) When a judicial officer not possessing trial jurisdiction orders a defendant held to answer before a court having jurisdiction to try the defendant, and bail has been denied or sought to be modified, application by motion may be made to the court having jurisdiction to try the defendant or, in the absence of the judge of the trial court, to the circuit court. The motion shall be determined promptly. No judge or a court of equal or inferior jurisdiction may modify or set a condition of release, unless the judge:

(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 first appearance judge and was authorized by the judge initially setting or denying bail to modify or set conditions of release.

(2) Applications by the defendant for modification of bail on any felony charge must be heard by a court in person at a hearing, with the defendant present and with at least 3 hours' notice to the state attorney and county attorney, if bond forfeiture proceedings are handled by the county attorney. The state may apply for modification of bail by showing good cause and with at least 3 hours' notice to the attorney for the defendant.

(3) If any trial court fixes bail and refuses its reduction before trial, the defendant may institute habeas corpus proceedings seeking reduction of bail. If application is made to the supreme court or district court of appeal, notice and a copy of such application shall be given to the attorney general and the state attorney. Such proceedings shall be determined promptly.

(e) Bail Before Conviction; Condition of Undertaking.

(1) If a person is admitted to bail for appearance for a preliminary hearing or on a charge that a judge is empowered to try, the condition of the undertaking shall be that the person will appear for the hearing or to answer the charge and will submit to the orders and process of the judge trying the same and will not depart without leave.

(2) If a person is admitted to bail after being held to answer by a judge or after an indictment or information on which the person is to be tried has been filed, the condition of the undertaking shall be that the person will appear to answer the charges before the court in which he or she may be prosecuted and submit to the orders and process of the court and will not depart without leave.

(f) Revocation of Bail. The court in its discretion for good cause, any time after a defendant who is at large on bail appears for trial, may commit the defendant to the custody of the proper official to abide by the judgment, sentence, and any further order of the court.

(g) Arrest and Commitment by Court. The court in which the cause is pending may direct the arrest and commitment of the defendant who is at large on bail when:

(1) there has been a breach of the undertaking;

(2) it appears that the defendant's sureties or any of them are dead or cannot be found or are insufficient or have ceased to be residents of the state; or

(3) the court is satisfied that the bail should be increased or new or additional security required.

The order for the commitment of the defendant shall recite generally the facts on which it is based and shall direct that the defendant be arrested by any official authorized to make arrests and that the defendant be committed to the official in whose custody he or she would be if he or she had not been given bail, to be detained by such official until legally discharged. The defendant shall be arrested pursuant to such order on a certified copy thereof, in any county, in the same manner as on a warrant of

arrest. If the order provided for is made because of the failure of the defendant to appear for judgment, the defendant shall be committed. If the order is made for any other cause, the court may determine the conditions of release, if any.

(h) Bail after Reccommitment. 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 (b) above.

(i) Qualifications of Surety after Order of Reccommitment. If the defendant offers bail after recommitment, each surety shall possess the qualifications and sufficiency and the bail shall be furnished in all respects in the manner prescribed for admission to bail before recommitment.

(j) Issuance of Capias; Bail Specified. On the filing of either an indictment or information charging the commission of a crime, if the person named therein is not in custody or at large on bail for the offense charged, the judge shall issue or shall direct the clerk to issue, either immediately or when so directed by the prosecuting attorney, a capias for the arrest of the person. If the person named in the indictment or information is a child and the child has been served with a promise to appear under the Florida Rules of Juvenile Procedure, capias need not be issued. Upon the filing of the indictment or information, the judge shall endorse the amount of bail, if any, and may authorize the setting or modification of bail by the judge presiding over the defendant's first appearance hearing. This endorsement shall be made on the capias and signed by the judge.

(k) Summons on Misdemeanor Charge. When a complaint is filed charging the commission of a misdemeanor only and the judge deems that process should issue as a result, or when an indictment or information on which the defendant is to be tried charging the commission of a misdemeanor only, and the person named in it is not in custody or at large on bail for the offense charged, the judge shall direct the clerk to issue a summons instead of a capias unless the judge has reasonable ground to believe that the person will not appear in response to a summons, in which event an arrest warrant or a capias shall be issued with the amount of bail endorsed on it. The summons shall state substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the judge issuing the summons or the judge having jurisdiction of the offense at a time and place stated in it.

(l) Summons When Defendant Is Corporation. On the filing of an indictment or information or complaint charging a corporation with the commission of a crime, whether felony

Rule 3.132 Pretrial Detention

(a) Motion Filed at First Appearance. A person arrested for an offense for which detention may be ordered under section 907.041, Florida Statutes, shall be taken before a judicial officer for a first appearance within 24 hours of arrest. The state may file with the judicial officer at first appearance a motion seeking pretrial detention, signed by the state attorney or an assistant, setting forth with particularity the grounds and the essential facts on which pretrial detention is sought and certifying that the state attorney has received testimony under oath supporting the grounds and the essential facts alleged in the motion. If no such motion is filed, or the motion is facially insufficient, the judicial officer shall proceed to determine the conditions of release pursuant to the provisions of rule 3.131(b)(1). If the motion for pretrial detention is facially sufficient, the judicial officer shall proceed to determine whether there is probable cause that the person committed the offense. If probable cause is found, the person may be detained in custody pending a final hearing on pretrial detention. If probable cause is established after first appearance pursuant to the provisions of rule 3.133 and the person has been released from custody, the person may be recommitted to custody pending a final hearing on pretrial detention.

(b) Motion Filed after First Appearance. A motion for pretrial detention may be filed at any time prior to trial. The motion shall be made to the court with trial jurisdiction. On receipt of a facially sufficient motion and a determination of probable cause, unless otherwise previously established, that an offense eligible for pretrial detention has been committed, the following shall occur:

(1) In the event of exigent circumstances, the court shall issue a warrant for the arrest of the named person, if the person has been released from custody. The person may be detained in custody pending a final hearing on pretrial detention.

(2) In the absence of exigent circumstances, the court shall order a hearing on the motion as provided in (c) below.

(c) Final Order.

(1) Hearing Required. A final order of pretrial detention shall be entered only after a hearing in the court of

trial jurisdiction. The hearing shall be held within 5 days of the filing of the motion or the date of taking the person in custody pursuant to a motion for pretrial detention, whichever is later. The state attorney has the burden of showing beyond a reasonable doubt the need for pretrial detention pursuant to the criteria in section 907.041, Florida Statutes. The defendant may request a continuance. The state shall be entitled to 1 continuance for good cause. No continuance shall exceed 5 days unless there are extenuating circumstances. The defendant may be detained pending the hearing, but in no case shall the defendant be detained in excess of 10 days, unless the delay is sought by the defendant. The person sought to be detained is entitled to representation by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence and testimony under oath 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. A final order of pretrial detention shall not be based exclusively on hearsay evidence. No testimony by the defendant shall be admissible to prove the guilt of the defendant at any other judicial proceeding, but may be admitted in an action for perjury based on the defendant's statements made at the pretrial detention hearing or for impeachment.

(2) Findings and Conclusions to Be Recorded. The court's pretrial detention order shall be based solely on 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.

(3) Dissolution of Order. 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.

(4) Further Proceedings on Order. If any trial court enters a final order of pretrial detention, the defendant may obtain review by motion to the appropriate appellate court. If motion for review is taken to the supreme court or the district court of appeal, notice and a copy of the motion shall be served on the attorney general and the state attorney; if review is taken to the circuit court, service shall be on the state attorney.

~~(d) Length of Detention. If ordered detained pending trial pursuant to section 907.041(4)(b), Florida Statutes, the defendant may not be held 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 the defendant's counsel.~~