

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 342

INTRODUCER: Criminal Justice Committee; Judiciary Committee; and Senator Simmons

SUBJECT: No Contact Orders

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 342 defines what is meant by an order of no contact in a court order granting the pretrial release of a criminal defendant.

Under current law, when a person is detained and charged with a crime, he or she is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One mandatory condition of pretrial release is that the defendant have no contact with the victim.

The bill provides that an order of no contact is effective immediately and enforceable for the duration of pretrial release or until the court modifies the order of no contact. The defendant will receive a copy of the order of no contact before he or she is released from custody on pretrial release under the provisions of the bill.

Under the bill, a defendant who is ordered to have “no contact” may not:

- Communicate orally or in writing with the victim in any manner, in person, telephonically, or electronically directly or through a third person, other than through an attorney and for lawful purposes;
- Have physical or violent contact with the victim or other person identified in the order or his or her property;
- Be within 500 feet of the victim’s or other identified person’s residence, even if the defendant and victim or other named person share the residence; and

- Be within 500 feet of the victim's or other identified person's vehicle, place of work, or a specified place frequented regularly by either of them.

II. Present Situation:

Bail Determination

The Florida Constitution creates a presumption in favor of release for a defendant charged with a crime and who is detained pending resolution of the charge. Section 14, Article I of the Florida Constitution provides, in part:

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 ... shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm ..., assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

The pretrial release provision in Florida Rule of Criminal Procedure 3.131 contains language identical to that of the state constitution.

In setting reasonable conditions for pretrial release as required by the Florida Constitution, a court must set conditions:

- Ensuring the appearance of the criminal defendant in court; and
- Protecting the community from unreasonable danger.¹

In determining whether to grant a pretrial release or set conditions of pretrial release, a court must consider:

- The nature and circumstances of the offense charged;
- The weight of 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 convictions, previous flight to avoid prosecution, or failure to appear in court;
- The nature and probability of danger from release;
- The source of funds used to post bail;
- Whether the defendant is already on release for another criminal charge or on probation, parole, or other release pending completion of a sentence;
- The street value of any drug or controlled substance connected to the criminal charge;
- The nature and probability of intimidation and danger to victims;
- Whether probable cause exists that the defendant committed a new crime while on pretrial release;
- Any other facts that the court considers relevant;
- Whether the crime charged is gang-related or alleged to be subject to enhanced punishment due to gang involvement under chapter 874, F.S.;

¹ Section 903.046(1), F.S.

- Whether the defendant is required to register as a sexual offender or predator; and
- Whether a burglary is reclassified based on a person intending to cross county lines in the commission of a burglary to reduce the ability of a law enforcement officer to track stolen goods.²

When granting pretrial release the court must impose, at minimum, the statutory conditions of pretrial release. These conditions are that the defendant:

- Refrain from criminal activity of any kind;
- Refrain from any contact of any type with the victim, except through pretrial discovery; and
- Comply with all conditions of pretrial release.³

Injunction for Domestic Violence

Domestic violence is any assault or aggravated assault, battery or aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one person which is caused by a family or household member.⁴ A victim of domestic violence or a person who has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence may file a petition for an injunction for protection against domestic violence.⁵

Section 741.31, F.S., provides that a person who violates an injunction for protection against domestic violence commits a first degree misdemeanor. A court will consider a person to have violated a protective injunction if he or she commits any of the following acts:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of domestic violence against the victim;
- Intentionally making an unlawful threat, word, or act to do violence to the victim;
- Phoning, contacting, or otherwise communicating with the victim directly or indirectly unless the order permits indirect contact;
- Knowingly and intentionally coming within 100 feet of the victim's vehicle, whether or not the vehicle is occupied;
- Defacing or destroying the victim's personal property, including a motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.⁶

Filing a motion for a domestic violence injunction is at the discretion of the victim. A victim of domestic violence might not pursue an injunction based on fear or other reasons. In these situations, a defendant on pretrial release is subject only to the more general "no contact" prohibition which applies to all pretrial release cases involving a victim. Whether a court or a law enforcement officer would interpret the general "no contact" prohibition to include nonphysical contact, such as harassing phone calls or other forms of intimidation is unknown.

² Section 903.046(2), F.S.

³ Section 903.047(1), F.S.

⁴ Section 741.28(2), F.S.

⁵ Section 741.30(1), F.S.

⁶ Section 741.31(4)(a), F.S.

III. Effect of Proposed Changes:

When a person is detained and charged with a crime, he or she is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One of the conditions required by statute is that the defendant have no contact with the victim.

Although current law requires a defendant to “refrain from contact of any type with the victim,” this concept is not defined in law. The bill defines what is meant by the condition of no contact, and includes various forms of nonphysical contact in the definition. Also, the bill prohibits a defendant from contacting others named in the court order, not just the victim.

Under the bill, acts prohibited by a no contact order specifically include:

- Communicating orally or in writing with the victim in any manner, in person, telephonically, electronically or through a third person, other than through an attorney and for lawful purposes;
- Having physical or violent contact with the victim or other person named in the order or his or her property;
- Being within 500 feet of the victim’s or other named person’s residence, even if the defendant and victim or other named person share the residence; and
- Being within 500 feet of the victim’s or other named person’s vehicle, place of work, or a specified place frequented regularly by the person.

The bill does not limit the authority of the court to impose additional conditions of pretrial release or the court’s authority to modify the conditions of a no contact order when appropriate. The defendant will receive a copy of the order of no contact before he or she is released from custody on pretrial release under the provisions of the bill.

The way that the bill defines “no contact” is similar to the provisions that constitute a violation of an injunction for domestic violence. In instances in which a victim of domestic violence does not pursue an injunction, the defendant will still be subject to similar prohibited acts of “no contact.”

The bill provides that an order of no contact is effective immediately and enforceable for the duration of pretrial release or until the court modifies the order of no contact. By providing for immediate effect of a no contact order, a detainee, for example, would be prevented from making harassing phone calls to the victim while in jail awaiting a pretrial release.

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not affect cities or counties. Additionally, the bill relates to criminal law, specifically pretrial detention, which is exempt from the limitations on the power of the Legislature to enact mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) anticipates that the bill may cause a temporary increase in the number of contempt proceedings or prosecutions for violations of conditions of release. However, OSCA cannot accurately determine the fiscal impact of the legislation due to the unavailability of data needed to determine its impact on judicial workloads. Nevertheless, OSCA anticipates that the impact of the bill will be manageable within its existing resources.⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 903.047 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 741.29, 784.046, and 901.15.

⁷ Office of the State Courts Administrator, *2015 Judicial Impact Statement, SB 342* (Feb. 2, 2015); on file with the Senate Judiciary Committee.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Criminal Justice on March 10, 2015:

Provides that the defendant will receive a copy of the court's order of no contact, which specifies the applicable prohibited acts, before the defendant is released from custody on pretrial release.

CS by Judiciary on February 17, 2015:

Creates an exception to the list of prohibited acts in a "no contact" order to allow contact by an attorney for the defendant with a victim or other person named in the order for lawful purposes.

- B. **Amendments:**

None.