

CHAPTER 907

PROCEDURE AFTER ARREST

907.04 Disposition of defendant upon arrest.

907.041 Pretrial detention and release.

907.045 Habeas corpus; motion to dismiss; preliminary hearing.

907.05 Criminal cases in circuit court to be tried first.

907.055 Trial of persons in custody.

907.04 Disposition of defendant upon arrest.--

(1) Except as provided in subsection (2), if a person who is arrested does not have a right to bail for the offense charged, he or she shall be delivered immediately into the custody of the sheriff of the county in which the indictment, information, or affidavit is filed. If the person who is arrested has a right to bail, he or she shall be released after giving bond on the amount specified in the warrant.

(2) If the person who is arrested is, at the time of arrest, in the custody of the Department of Corrections under sentence of imprisonment, unless otherwise ordered by the court, such person shall remain in the department's custody pending disposition of the charge or until the person's underlying sentence of imprisonment expires, whichever occurs earlier. If the arrested state prisoner's presence is required in court for any reason, the provisions of s. 944.17(8) shall apply.

History.--s. 133a, ch. 19554, 1939; CGL 1940 Supp. 8663(139); s. 67, ch. 70-339; s. 1508, ch. 97-102; s. 1, ch. 2006-99.

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.--**

(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 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. Aircraft piracy;
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;
19. Home invasion robbery;
20. Act of terrorism as defined in s. 775.30;
21. Manufacturing any substances in violation of chapter 893; and
22. Attempting or conspiring to commit any such crime.

(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) 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. 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.

6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed; or

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.

(d) 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) 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) 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.

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

(h) 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) 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) 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.

(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.

(l) The Legislature finds that a person who manufactures any substances in violation of chapter 893 poses a threat of harm to the community and that the factual circumstances of such a crime indicate a disregard for the safety of the community. The court shall order pretrial detention if the court finds that there is a substantial probability that a defendant charged with manufacturing any substances in violation of chapter 893 committed such a crime and if the court finds that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons.

History.--ss. 1, 2, 3, 4, ch. 82-398; s. 48, ch. 84-103; s. 1, ch. 89-127; s. 2, ch. 89-281; s. 7, ch. 93-212; s. 12, ch. 95-195; s. 25, ch. 96-322; s. 1834, ch. 97-102; s. 106, ch. 99-3; s. 10, ch. 99-188; s. 2, ch. 2000-178; s. 2, ch. 2000-229; s. 24, ch. 2000-320; s. 2, ch. 2001-356; s. 1, ch. 2002-212; s. 16, ch. 2005-128; s. 4, ch. 2006-306.

907.045 Habeas corpus; motion to dismiss; preliminary hearing.--A defendant who is in custody when an indictment, information, or affidavit on which she or he can be tried is filed may apply for a writ of habeas corpus attacking the indictment, information, or affidavit, or the defendant may move to dismiss the indictment, information, or affidavit. A defendant who has been confined for 30 days after her or his arrest without a trial shall be allowed a preliminary hearing upon application.

History.--s. 140, ch. 19554, 1939; CGL 1940 Supp. 8663(147); s. 1, ch. 26767, 1951; s. 69, ch. 70-339; s. 1509, ch. 97-102.

Note.--Former s. 909.04.

907.05 Criminal cases in circuit court to be tried first.--Cases on the criminal docket shall be tried first at each term of the circuit court, if they can be tried without injury to the interests of the state or defendant. Cases presented by the grand jury during a term may be tried during the term.

History.--s. 133b, ch. 19554, 1939; CGL 1940 Supp. 8663(140); s. 68, ch. 70-339.

907.055 Trial of persons in custody.--A defendant who is in custody when an indictment or information for a felony is filed shall be arraigned and tried during the term when the indictment or information is filed unless good cause is shown for a continuance.

History.--s. 159, ch. 19554, 1939; CGL 1940 Supp. 8663(166); s. 71, ch. 70-339.

Note.--Former s. 909.23.