

By the Committee on Criminal Justice; and Senators
Brown-Waite, Smith and Crist

307-477D-02

1 A bill to be entitled

2 An act relating to the detention of material

3 witnesses; authorizing circuit judges to order

4 the detention of certain material witnesses for

5 a prescribed period of time under specified

6 circumstances; specifying when hearing must be

7 held; providing for right to counsel; providing

8 that requirements relating to detention of

9 certain material witnesses do not abrogate

10 common law; providing that detention of certain

11 material witnesses is not an arrest for

12 purposes of an employment application or

13 application for professional licensure;

14 providing for the future expiration of

15 provisions granting such authority; providing

16 an effective date.

17

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

19

20 Section 1. (1) Upon application filed under the

21 authority of the Governor, the Attorney General, the statewide

22 prosecutor, or a state attorney, supported by affidavit filed

23 by the Department of Law Enforcement that the testimony of a

24 person is material in a criminal investigation or other

25 proceeding involving a suspected or charged violation of state

26 law which relates to an act of terrorism or is in furtherance

27 of an act of terrorism and that it may become impracticable to

28 secure the presence of that person by subpoena, the circuit

29 judge before whom the application is pending may order the

30 detention of that person for a period of time not to exceed 4

31

1 calendar days upon a finding that detention is necessary to
2 prevent a failure of justice.

3 (2) As used in this section, the term:

4 (a) "Failure of justice" means that a serious risk
5 exists that the witness will flee or will obstruct or attempt
6 to obstruct justice or threaten, injure, or intimidate, or
7 attempt to threaten, injure, or intimidate another prospective
8 witness or any other person or that the witness poses a
9 serious risk to the safety of any other person or the
10 community.

11 (b) "Terrorism" means an activity that:

12 1. Involves a violent act or act dangerous to human
13 life which is a violation of the criminal laws of this state
14 or of the United States; and

15 2. Appears to be intended to:

16 a. Intimidate, injure, or coerce a civilian
17 population;

18 b. Influence the policy of a government by
19 intimidation or coercion; or

20 c. Affect the conduct of government through
21 destruction of property, assassination, murder, or kidnapping.

22 (3)(a) The circuit judge to whom application is made
23 to detain a material witness shall review the application and
24 may order the detention of the witness as provided in this
25 section if the criminal investigation or other proceeding
26 involves a suspected or charged violation of state law which
27 relates to an act of terrorism or in furtherance of an act of
28 terrorism and shall set out in a written order findings that
29 justify the disposition of the application.

30 (b) Not later than 48 hours after being detained, the
31 material witness is entitled to a hearing before the circuit

1 judge who issued the order of detention to determine whether
2 further detention is necessary to prevent a failure of
3 justice. In order for the court to direct the continued
4 detention of the material witness, the court must issue a
5 written order of detention which contains findings that
6 justify the continued detention of the material witness.

7 (c) Evidence offered in support of an application for
8 an order of detention or offered at the hearing conducted to
9 determine whether further detention is necessary must be clear
10 and convincing.

11 (4) A person subject to possible temporary detention
12 under this section shall have the right to retain counsel
13 during the proceeding to determine whether such detention is
14 appropriate. If the person desires counsel but is indigent,
15 the court shall appoint counsel if it finds that the person is
16 indigent.

17 (5) Nothing contained in this section abrogates any
18 rights recognized by the courts under common law.

19 (6) This section expires July 1, 2004.

20 Section 2. A detention as a material witness in a
21 criminal investigation or other proceeding involving a
22 suspected or charged violation of state law relating to an act
23 of terrorism or in furtherance of an act of terrorism is not
24 an arrest for purposes of an employment application or
25 application for professional licensure.

26 Section 3. This act shall take effect upon becoming a
27 law.
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 78-B

- Provides a definition of the term "terrorism."
- Provides for application to detain for up to 4 days a person who has testimony material to a criminal investigation or other proceeding involving a suspected or charged violation of state law which relates to an act of terrorism or is in furtherance of an act of terrorism, subject to specified requirements being met upon a showing of clear and convincing evidence.
- Provides for process of applying for detention and for a hearing on further detention.
- Defines key term.
- Requires that hearing on further detention be held no later than 48 hours after being detained.
- Provides for right to counsel at the detention hearing.
- Provides that requirements relating to detention of certain material witnesses do not abrogate common law.
- Provides that detention as a material witness is not an arrest for purposes of an employment application or application for professional licensure.