

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Cantens offered the following:

13 **Amendment (with title amendment)**

14 On page 1, of the bill between lines 22 and 23

16 insert:

17 Section 2. Paragraph (a) of subsection (4) of
18 s.907.041, Florida Statutes, is amended to read:

19 907.041 Pretrial detention and release.--

20 (4) PRETRIAL DETENTION.--

21 (a) As used in this subsection, "dangerous crime"
22 means any of the following:

- 23 1. Arson;
- 24 2. Aggravated assault;
- 25 3. Aggravated battery;
- 26 4. Illegal use of explosives;
- 27 5. Child abuse or aggravated child abuse;
- 28 6. Abuse of an elderly person or disabled adult, or
- 29 aggravated abuse of an elderly person or disabled adult;
- 30 7. Aircraft piracy ~~Hijacking~~;
- 31 8. Kidnapping;

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- 1 9. Homicide;
2 10. Manslaughter;
3 11. Sexual battery;
4 12. Robbery;
5 13. Carjacking;
6 14. Lewd, lascivious, or indecent assault or act upon
7 or in presence of a child under the age of 16 years;
8 15. Sexual activity with a child, who is 12 years of
9 age or older but less than 18 years of age, by or at
10 solicitation of person in familial or custodial authority;
11 16. Burglary of a dwelling;
12 17. Stalking and aggravated stalking;
13 18. Act of domestic violence as defined in s. 741.28;
14 ~~and~~
15 19. Home invasion robbery;
16 20. Act of terrorism as defined in s.775.30; and
17 21. Attempting or conspiring to commit any such crime
18 ~~and home invasion robbery.~~
19 (b) No person charged with a dangerous crime shall be
20 granted nonmonetary pretrial release at a first appearance
21 hearing; however, the court shall retain the discretion to
22 release an accused on electronic monitoring or on recognizance
23 bond if the findings on the record of facts and circumstances
24 warrant such a release.
25 (c) The court may order pretrial detention if it finds
26 a substantial probability, based on a defendant's past and
27 present patterns of behavior, the criteria in s. 903.046, and
28 any other relevant facts, that any of the following
29 circumstances exists:
30 1. The defendant has previously violated conditions of
31 release and that no further conditions of release are

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1 reasonably likely to assure the defendant's appearance at
2 subsequent proceedings;

3 2. The defendant, with the intent to obstruct the
4 judicial process, has threatened, intimidated, or injured any
5 victim, potential witness, juror, or judicial officer, or has
6 attempted or conspired to do so, and that no condition of
7 release will reasonably prevent the obstruction of the
8 judicial process;

9 3. The defendant is charged with trafficking in
10 controlled substances as defined by s. 893.135, that there is
11 a substantial probability that the defendant has committed the
12 offense, and that no conditions of release will reasonably
13 assure the defendant's appearance at subsequent criminal
14 proceedings; or

15 4. The defendant is charged with DUI manslaughter, as
16 defined by s. 316.193, and that there is a substantial
17 probability that the defendant committed the crime and that
18 the defendant poses a threat of harm to the community;
19 conditions that would support a finding by the court pursuant
20 to this subparagraph that the defendant poses a threat of harm
21 to the community include, but are not limited to, any of the
22 following:

23 a. The defendant has previously been convicted of any
24 crime under s. 316.193, or of any crime in any other state or
25 territory of the United States that is substantially similar
26 to any crime under s. 316.193;

27 b. The defendant was driving with a suspended driver's
28 license when the charged crime was committed; or

29 c. The defendant has previously been found guilty of,
30 or has had adjudication of guilt withheld for, driving while
31 the defendant's driver's license was suspended or revoked in

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1 violation of s. 322.34;

2 5. The defendant poses the threat of harm to the
3 community. The court may so conclude, if it finds that the
4 defendant is presently charged with a dangerous crime, that
5 there is a substantial probability that the defendant
6 committed such crime, that the factual circumstances of the
7 crime indicate a disregard for the safety of the community,
8 and that there are no conditions of release reasonably
9 sufficient to protect the community from the risk of physical
10 harm to persons.

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

15 7. The defendant has violated one or more conditions
16 of pretrial release or bond for the offense currently before
17 the court and the violation, in the discretion of the court,
18 supports a finding that no conditions of release can
19 reasonably protect the community from risk of physical harm to
20 persons or assure the presence of the accused at trial.

21 (d) When a person charged with a crime for which
22 pretrial detention could be ordered is arrested, the arresting
23 agency shall promptly notify the state attorney of the arrest
24 and shall provide the state attorney with such information as
25 the arresting agency has obtained relative to:

26 1. The nature and circumstances of the offense
27 charged;

28 2. The nature of any physical evidence seized and the
29 contents of any statements obtained from the defendant or any
30 witness;

31 3. The defendant's family ties, residence, employment,

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1 financial condition, and mental condition; and

2 4. The defendant's past conduct and present conduct,
3 including any record of convictions, previous flight to avoid
4 prosecution, or failure to appear at court proceedings.

5 (e) When a person charged with a crime for which
6 pretrial detention could be ordered is arrested, the arresting
7 agency may detain such defendant, prior to the filing by the
8 state attorney of a motion seeking pretrial detention, for a
9 period not to exceed 24 hours.

10 (f) The pretrial detention hearing shall be held
11 within 5 days of the filing by the state attorney of a
12 complaint to seek pretrial detention. The defendant may
13 request a continuance. No continuance shall be for longer
14 than 5 days unless there are extenuating circumstances. The
15 defendant may be detained pending the hearing. The state
16 attorney shall be entitled to one continuance for good cause.

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

19 (h) The defendant is entitled to be represented by
20 counsel, to present witnesses and evidence, and to
21 cross-examine witnesses. The court may admit relevant
22 evidence without complying with the rules of evidence, but
23 evidence secured in violation of the United States
24 Constitution or the Constitution of the State of Florida shall
25 not be admissible. No testimony by the defendant shall be
26 admissible to prove guilt at any other judicial proceeding,
27 but such testimony may be admitted in an action for perjury,
28 based upon the defendant's statements made at the pretrial
29 detention hearing, or for impeachment.

30 (i) The pretrial detention order of the court shall be
31 based solely upon evidence produced at the hearing and shall

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1 contain findings of fact and conclusions of law to support it.
2 The order shall be made either in writing or orally on the
3 record. The court shall render its findings within 24 hours of
4 the pretrial detention hearing.

5 (j) A defendant convicted at trial following the
6 issuance of a pretrial detention order shall have credited to
7 his or her sentence, if imprisonment is imposed, the time the
8 defendant was held under the order, pursuant to s. 921.161.

9 (k) The defendant shall be entitled to dissolution of
10 the pretrial detention order whenever the court finds that a
11 subsequent event has eliminated the basis for detention.

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14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 On page 1, line 4

17

18 insert after semicolon:

19 providing for pretrial detention of persons

20 charged with an act of terrorism;

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