

STORAGE NAME: h0107B.sec.doc

DATE: October 26, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SELECT COMMITTEE ON SECURITY
ANALYSIS**

BILL #: HB 107-B

RELATING TO: Detention of Material Witnesses

SPONSOR(S): Representative(s) Goodlette

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) SELECT COMMITTEE ON SECURITY
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides for the temporary detention of certain witnesses with information material in a criminal investigation or other proceeding involving a suspected or charged violation of state law that relates to an act of terrorism or is in furtherance of an act of terrorism. An application for detention is filed under the authority of the Governor, the Attorney General, the Statewide Prosecutor, or the State Attorney. This application is supported by an affidavit filed by the Department of Law Enforcement, which asserts that the testimony of the person (for whom detention is being sought) is: 1) material in a criminal investigation or other proceeding involving a suspected or charged violation of state law that relates to an act of terrorism or is in furtherance of an act of terrorism; and 2) it may become impracticable to secure the presence of the person by subpoena. The circuit judge before whom the application is pending may order the detention of that person for a period not to exceed 4 calendar days upon a finding, based upon clear and convincing evidence, that the detention is necessary to prevent a failure of justice.

The bill provides that not later than 48 hours after being detained the material witness is entitled to a hearing before the circuit judge who issued the order of detention to determine whether further detention is necessary to prevent a failure of justice. In order for the court to direct the continued detention of the material witness, the court must issue a written order of detention that contains findings that justify the continued detention of the material witness.

Evidence offered in support of the application for an order of detention or offered at the hearing conducted to determine whether further detention is necessary must be clear and convincing.

This bill has an indeterminate fiscal impact.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill contravenes the principle of Less Government by increasing the powers that government, particularly law enforcement, currently has.

This bill contravenes the principle of Individual Freedom by not allowing material witnesses to acts relating to terrorism to be released under their own recognizance.

B. PRESENT SITUATION:

Florida Law

Section 902.17, F.S., provides that if a witness who is required to enter into a recognizance to appear refuses to comply with the order, the magistrate shall commit the witness to custody until the witness complies or is legally discharged.

If it appears from examination on oath of a witness who states that she or he is unable to give security for her or his appearance, or on oath by any other person that the witness is unable to give security, the magistrate or the court having jurisdiction to try the defendant shall make an order finding that fact, and the witness shall be detained pending application for her or his conditional examination. Within 3 days from the entry of the order, the witness shall be conditionally examined on application of the state or the defendant. At the completion of the examination, the witness shall be discharged. If a conditional examination is not made within the 3 days, the witness shall be discharged.

Federal Law

Title 18 U.S.C. § 3144 provides:

If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately

be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

Rule 15 of the Federal Rules of Criminal Procedure provides that upon written notice of a material witness and the parties, the Court may issue an order that the witness' deposition be taken, and after the taking of such deposition, that the witness be discharged. Parties include both the state and the criminal defendant whose cases are the subject of a material witness' possible detention.

The federal statute provides that a judicial officer *may* order the arrest of a witness and treat the witness in accordance with Title 18 U.S.C. § 3142. This statute relates to release or detention of a witness pending trial. There are provisions of this statute governing release on personal recognizance or upon execution of an unsecured appearance bond; release on a condition or combination of conditions specified in the statute (*e.g.*, executing a bail bond with solvent sureties); temporary detention to permit revocation of conditional release, deportation, or exclusion (*e.g.*, an illegal alien who may flee or pose a danger to a person or the community); or detention after a hearing (prescribed by the statute) wherein "the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. . . ." The statute prescribes no time period, except for a maximum threshold of 10 working days (excluding holidays) for a temporary detention to permit revocation of conditional release, deportation, or exclusion. See Title 18 U.S.C. §§ 3144 and 3142.

C. EFFECT OF PROPOSED CHANGES:

This bill provides for the temporary detention of certain witnesses with information material in a criminal investigation or other proceeding involving a suspected or charged violation of state law that relates to an act of terrorism or is in furtherance of an act of terrorism. An application for detention is filed under the authority of the Governor, the Attorney General, the Statewide Prosecutor, or the State Attorney. This application is supported by an affidavit filed by the Department of Law Enforcement, which avers that the testimony of the person (for whom detention is sought) is: 1) material in a criminal investigation or other proceeding involving a suspected or charged violation of state law that relates to an act of terrorism or is in furtherance of an act of terrorism; and 2) it may become impracticable to secure the presence of the person by subpoena. The circuit judge before whom the application is pending may order the detention of that person for a period not to exceed 4 calendar days upon a finding that the detention is necessary to prevent a failure of justice.

The bill provides that not later than 48 hours after being detained the material witness is entitled to a hearing before the circuit judge who issued the order of detention to determine whether further detention is necessary to prevent a failure of justice. In order for the court to direct the continued detention of the material witness, the court must issue a written order of detention that contains findings, based upon clear and convincing evidence, that justify the continued detention of the material witness.

The bill defines “terrorism” as an activity that :

- Involves a violent act or act dangerous to human life that is a violation of the criminal laws of this state or of the United States; and
- Appears to be intended to:
 - Intimidate, injure, or coerce a civilian population;
 - Influence the policy of a government by intimidation or coercion; or
 - Affect the conduct of government through destruction of property, assassination, murder, or kidnapping.

This definition is patterned after the federal definition in Title 18 U.S.C. § 3077.

The substantive differences between the definition in the bill and the federal definition are that the state definition adds violent acts or acts dangerous to human life that are violations of state or federal law; and that appear to be intended to *injure* a civilian population; or affect the conduct of government through *destruction of property* or *murder*.

“Failure of justice” is defined as “a serious risk exists that the witness will flee or will obstruct or attempt to obstruct justice or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate another prospective witness or any other person or that the witness poses a serious risk to the safety of any other person or the community.” The federal material witness statute contains the term “failure of justice,” but it is not statutorily defined.

The bill provides for the right to retain counsel or to seek the appointment of counsel, if the person is indigent and desires counsel for the purpose of representation at the hearing to determine whether detention is warranted.

The bill provides that an arrest and detention as a material witness under this section is not an arrest for purposes of an employment application or application for professional licensure.

The bill takes effect upon becoming a law, and contains a provision to sunset the material witness provisions on July 1, 2004.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The fiscal impact of this bill is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

The fiscal impact of this bill is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

STORAGE NAME: h0107B.sec.doc

DATE: October 26, 2001

PAGE: 6

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON SELECT COMMITTEE ON SECURITY:

Prepared by:

Staff Director:

C. Scott Jenkins

Thomas J. Randle / Richard Hixson