

By Representatives Goodlette and Ball

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.

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

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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

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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.

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HOUSE SUMMARY

With respect to the detention of material witnesses, authorizes circuit judges to order the detention of certain material witnesses for a prescribed period of time under specified circumstances. Specifies when hearing must be held. Provides for right to counsel. Provides that requirements relating to detention of certain material witnesses do not abrogate common law. Provides that detention of certain material witnesses is not an arrest for purposes of an employment application or application for professional licensure. Provides for the future expiration of provisions granting such authority.