

STORAGE NAME: s0006C.sec.doc

DATE: December 4, 2001

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

BILL #: SB 6-C

RELATING TO: Terrorism/Pretrial Detention

SPONSOR(S): Senator Brown-Waite and others

TIED BILL(S):

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

- (1) SECURITY, SELECT
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill defines "terrorism" as any activity that:

- Involves a violent act or an act dangerous to human life that is a violation of the criminal laws of Florida or federal law; or
- Involves a violation of § 815.06 (offenses against computer users); and
- Is 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, or aircraft piracy.

The bill also amends the statutory provision relating to pretrial detention and release. Specifically, acts of terrorism are added to the list of "dangerous crimes" for which pretrial detention is authorized. "Aircraft piracy" is added, and "hijacking" is deleted from the same list.

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 does not support the principles of Less Government and Individual Freedom, because it permits pretrial confinement for individuals charged with acts of terrorism.

B. PRESENT SITUATION:

TERRORISM

Florida law does not currently define the term "terrorism." The federal USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) signed into law on October 26, 2001 defines domestic terrorism in Title 18 USC § 2331 as follows:

- (5) The term 'domestic terrorism' means activities that--
- (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
 - (B) appear to be intended--
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion;
 - or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping. . . .

PRETRIAL DETENTION

Article I, Section 14 of the Florida Constitution provides that every person charged with a crime shall be entitled to pretrial release on reasonable conditions. It also provides for two exceptions to this right. The first exception is for persons charged with a capital offense or an offense punishable by life imprisonment when the proof of guilt is evident or the presumption is great. Article I, Section 14, Fla. Const.; *State v. Arthur*, 390 So. 2d 717 (Fla. 1980). The second exception applies when no conditions of release can:

- Reasonably protect the community from risk of physical harm to persons;
- Assure the presence of the accused at trial; or
- Assure the integrity of the judicial process.

Section 907.041(4)(c) places restrictions on a trial court's authority to order pretrial detention. A trial court may order pretrial detention only if it finds a substantial probability, based on a

defendant's past and present patterns of behavior, the criteria in § 903.046 (bail criteria), and any other relevant facts, that:

1. The defendant has previously violated conditions of release and that no further conditions of release are likely to assure the defendant's appearance at subsequent proceedings; or
2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror or judicial officer and that no conditions of release will reasonably prevent the obstruction of the judicial process; or
3. The defendant is charged with trafficking in controlled substances, that there is a substantial probability that the defendant has committed the offense, and that no conditions of pretrial release will reasonably assure the defendant's appearance at subsequent criminal proceedings; or
4. The defendant is charged with DUI manslaughter and there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community; or
5. The defendant poses the threat of harm to the community¹; or
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 current offense, and the violation supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the defendant's presence at trial.

Considerations Regarding Pretrial Detention and Release

Section 907.041(1), F.S., provides in part: "It is the intent of the Legislature that the primary consideration be the protection of the community from risk of physical harm to persons." The court, in deciding whether to order pretrial detention, must consider the factors outlined in § 903.046, F.S., which sets forth the Legislature's purpose of, and criteria for, determining bail.

Section 903.046(1) provides, "[t]he purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant." According to § 903.046(2), when determining whether to release a defendant on bail or other conditions, and what that bail or conditions may be, the court must consider:

- (a) The nature and circumstances of the offense charged.
- (b) The weight of the evidence against the defendant.

¹ The trial court may conclude that the defendant poses a threat of harm to the community if it finds each of the following:

- The defendant is currently charged with a "dangerous crime" as defined in § 907.041(4)(a).
- There is a substantial probability that the defendant committed the charged crime.
- That the factual circumstances of the crime indicate a disregard for the safety of the community.
- That there are no conditions of pretrial release reasonably sufficient to protect the community from risk of physical harm to persons.

- (c) The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- (d) The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- (e) The nature and probability of danger the defendant's release poses to the community.
- (f) The source of funds used to post bail.
- (g) Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- (h) The street value of any drug or controlled substance connected to or involved in the criminal charge.
- (i) The nature and probability of intimidation and danger to victims.
- (j) Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- (k) Any other facts the court considers relevant.

Procedural Requirements For Determining Pretrial Detention and Release

Pursuant to Fla.R.Crim.P. 3.131, unless the state attorney has filed a motion for pretrial detention, the court, for offenses other than capital or life felonies, shall conduct a hearing to determine pretrial release.

When a person is arrested and taken into custody, he or she may be held for up to 24 hours prior to the filing of a motion for pretrial detention. See § 907.041(4)(e). Within that same 24-hour period, the arrested person must be brought before a judge for a "first appearance" hearing. Fla.R.Crim.P. 3.132(a). At this proceeding, unless the state attorney has filed a motion for pretrial detention within this time frame, even if the defendant is charged with a dangerous crime, the court must determine conditions of pretrial release for the defendant. Fla.R.Crim.P. 3.130. Notwithstanding the fact that a defendant could be charged with a dangerous crime, § 907.041(3) currently creates a statutory presumption in favor of pretrial release on nonmonetary conditions.

The state attorney may file a motion seeking pretrial detention any time prior to trial. A hearing on pretrial detention must be held within 5 days of the filing of the motion for pretrial detention. See § 907.041(4)(f) and Fla.R.Crim. P. 3.132(c)(1). A defendant on a felony charge may make a motion requesting the court to modify or reduce bail with a minimum of 3-hours notice provided to the state attorney and the county attorney. § 903.035(2) and Fla.R. Crim.P. 3.131(d)(2).

The state attorney has the burden of proving the need for pretrial detention beyond a reasonable doubt. See Fla.R.Crim. P. 3.132(c)(1) and § 907.041(4)(g)].

Conditions of Pretrial Release

Section 903.047 provides that as a condition of pretrial release the court shall require that the defendant refrain from criminal activity of any kind and the defendant refrain from any contact of any type with the victim except through pretrial discovery.

C. EFFECT OF PROPOSED CHANGES:

TERRORISM

This bill defines "terrorism" as an activity that :

- Involves a violent act or an act dangerous to human life that is a violation of the criminal laws of Florida or federal law; or

- Involves a violation of s. 815.06 (offenses against computer users); and
- Is 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, or aircraft piracy.

By modeling the definition of "terrorism" after federal law, Florida would have the benefit of federal case law interpreting the federal definition, which might be viewed as persuasive authority in interpreting the Florida definition. Certain Florida laws that are patterned after federal law, such as Florida's wiretap laws, money-laundering laws, and racketeering laws, benefit from definitions that closely follow federal definitions.

PRETRIAL DETENTION

This bill defines terrorism and adds it to the list of offenses that constitute a "dangerous crime" for purposes of Florida's pretrial detention statute. Section 907.041, F.S., is amended to authorize pretrial detention of individuals charged with acts that meet the definition of terrorism if the other conditions of that section are met. This section is further amended by deleting "hijacking" and adding "aircraft piracy" to the list of dangerous crimes for which pretrial detention is authorized.²

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:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

² This is a technical change as currently there is no "hijacking" offense under Florida law. Carjacking is currently included on the pretrial confinement list of dangerous crimes in § 907.041(4)(a), F.S.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to spend funds or to take actions requiring expenditure.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON SELECT COMMITTEE ON SECURITY:

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