

By Senators Brown-Waite and Smith

10-623-02

1 A bill to be entitled
 2 An act relating to terrorism; creating s.
 3 775.30, F.S.; defining "terrorism" for purposes
 4 of the Florida Criminal Code; providing for
 5 pretrial detention of persons charged with an
 6 act of terrorism; providing an effective date.

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

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 10 Section 1. Section 775.30, Florida Statutes, is
 11 created to read:

12 775.30 Terrorism; definition.--As used in the Florida
 13 Criminal Code, the term "terrorism" means an activity that:

14 (1)(a) Involves a violent act or an act dangerous to
 15 human life which is a violation of the criminal laws of this
 16 state or of the United States; or

17 (b) Involves a violation of s. 815.06; and

18 (2) Is intended to:

19 (a) Intimidate, injure, or coerce a civilian
 20 population;

21 (b) Influence the policy of a government by
 22 intimidation or coercion; or

23 (c) Affect the conduct of government through
 24 destruction of property, assassination, murder, kidnapping, or
 25 aircraft piracy.

26 Section 2. Paragraph (a) of subsection (4) of s.
 27 907.041, Florida Statutes, is amended to read:

28 907.041 Pretrial detention and release.--

29 (4) PRETRIAL DETENTION.--

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

- 1 1. Arson;
- 2 2. Aggravated assault;
- 3 3. Aggravated battery;
- 4 4. Illegal use of explosives;
- 5 5. Child abuse or aggravated child abuse;
- 6 6. Abuse of an elderly person or disabled adult, or
- 7 aggravated abuse of an elderly person or disabled adult;
- 8 7. Aircraft piracy ~~Hijacking~~;
- 9 8. Kidnapping;
- 10 9. Homicide;
- 11 10. Manslaughter;
- 12 11. Sexual battery;
- 13 12. Robbery;
- 14 13. Carjacking;
- 15 14. Lewd, lascivious, or indecent assault or act upon
- 16 or in presence of a child under the age of 16 years;
- 17 15. Sexual activity with a child, who is 12 years of
- 18 age or older but less than 18 years of age, by or at
- 19 solicitation of person in familial or custodial authority;
- 20 16. Burglary of a dwelling;
- 21 17. Stalking and aggravated stalking;
- 22 18. Act of domestic violence as defined in s. 741.28;
- 23 ~~and~~
- 24 19. Home invasion robbery;
- 25 20. Act of terrorism as defined in s.775.30; and
- 26 21. Attempting or conspiring to commit any such crime
- 27 ~~and home-invasion robbery.~~
- 28 (b) No person charged with a dangerous crime shall be
- 29 granted nonmonetary pretrial release at a first appearance
- 30 hearing; however, the court shall retain the discretion to
- 31 release an accused on electronic monitoring or on recognizance

1 bond if the findings on the record of facts and circumstances
2 warrant such a release.

3 (c) The court may order pretrial detention if it finds
4 a substantial probability, based on a defendant's past and
5 present patterns of behavior, the criteria in s. 903.046, and
6 any other relevant facts, that any of the following
7 circumstances exists:

8 1. The defendant has previously violated conditions of
9 release and that no further conditions of release are
10 reasonably likely to assure the defendant's appearance at
11 subsequent proceedings;

12 2. The defendant, with the intent to obstruct the
13 judicial process, has threatened, intimidated, or injured any
14 victim, potential witness, juror, or judicial officer, or has
15 attempted or conspired to do so, and that no condition of
16 release will reasonably prevent the obstruction of the
17 judicial process;

18 3. The defendant is charged with trafficking in
19 controlled substances as defined by s. 893.135, that there is
20 a substantial probability that the defendant has committed the
21 offense, and that no conditions of release will reasonably
22 assure the defendant's appearance at subsequent criminal
23 proceedings; or

24 4. The defendant is charged with DUI manslaughter, as
25 defined by s. 316.193, and that there is a substantial
26 probability that the defendant committed the crime and that
27 the defendant poses a threat of harm to the community;
28 conditions that would support a finding by the court pursuant
29 to this subparagraph that the defendant poses a threat of harm
30 to the community include, but are not limited to, any of the
31 following:

1 a. The defendant has previously been convicted of any
2 crime under s. 316.193, or of any crime in any other state or
3 territory of the United States that is substantially similar
4 to any crime under s. 316.193;

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

7 c. The defendant has previously been found guilty of,
8 or has had adjudication of guilt withheld for, driving while
9 the defendant's driver's license was suspended or revoked in
10 violation of s. 322.34;

11 5. The defendant poses the threat of harm to the
12 community. The court may so conclude, if it finds that the
13 defendant is presently charged with a dangerous crime, that
14 there is a substantial probability that the defendant
15 committed such crime, that the factual circumstances of the
16 crime indicate a disregard for the safety of the community,
17 and that there are no conditions of release reasonably
18 sufficient to protect the community from the risk of physical
19 harm to persons.

20 6. The defendant was on probation, parole, or other
21 release pending completion of sentence or on pretrial release
22 for a dangerous crime at the time the current offense was
23 committed; or

24 7. The defendant has violated one or more conditions
25 of pretrial release or bond for the offense currently before
26 the court and the violation, in the discretion of the court,
27 supports a finding that no conditions of release can
28 reasonably protect the community from risk of physical harm to
29 persons or assure the presence of the accused at trial.

30 (d) When a person charged with a crime for which
31 pretrial detention could be ordered is arrested, the arresting

1 agency shall promptly notify the state attorney of the arrest
2 and shall provide the state attorney with such information as
3 the arresting agency has obtained relative to:

4 1. The nature and circumstances of the offense
5 charged;

6 2. The nature of any physical evidence seized and the
7 contents of any statements obtained from the defendant or any
8 witness;

9 3. The defendant's family ties, residence, employment,
10 financial condition, and mental condition; and

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

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

19 (f) The pretrial detention hearing shall be held
20 within 5 days of the filing by the state attorney of a
21 complaint to seek pretrial detention. The defendant may
22 request a continuance. No continuance shall be for longer
23 than 5 days unless there are extenuating circumstances. The
24 defendant may be detained pending the hearing. The state
25 attorney shall be entitled to one continuance for good cause.

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

28 (h) The defendant is entitled to be represented by
29 counsel, to present witnesses and evidence, and to
30 cross-examine witnesses. The court may admit relevant
31 evidence without complying with the rules of evidence, but

1 evidence secured in violation of the United States
2 Constitution or the Constitution of the State of Florida shall
3 not be admissible. No testimony by the defendant shall be
4 admissible to prove guilt at any other judicial proceeding,
5 but such testimony may be admitted in an action for perjury,
6 based upon the defendant's statements made at the pretrial
7 detention hearing, or for impeachment.

8 (i) The pretrial detention order of the court shall be
9 based solely upon evidence produced at the hearing and shall
10 contain findings of fact and conclusions of law to support it.
11 The order shall be made either in writing or orally on the
12 record. The court shall render its findings within 24 hours of
13 the pretrial detention hearing.

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

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

21 Section 3. This act shall take effect upon becoming a
22 law.

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25 SENATE SUMMARY

26 Defines the term "terrorism" for purposes of the Florida
27 Criminal Code. Prohibits the court from releasing a
28 defendant before trial without setting bail if the
29 defendant is charged with aircraft piracy, home-invasion
30 robbery, or an act of terrorism.
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