

By Senators Brown-Waite and Smith

10-626A-02

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
8 prospective witness or any other person or that the witness
9 poses a serious risk to the safety of any other person or the
10 community.

11 (b) "Terrorism" means an activity that:

12 1. Involves:

13 a. A violent act or act dangerous to human life which
14 is a violation of the criminal laws of this state or of the
15 United States; or

16 b. A violation of section 815.06, Florida Statutes;
17 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, or kidnapping.

25 (3)(a) The circuit judge to whom application is made
26 to detain a material witness shall review the application and
27 may order the detention of the witness as provided in this
28 section if the criminal investigation or other proceeding
29 involves a suspected or charged violation of state law which
30 relates to an act of terrorism or in furtherance of an act of

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1 terrorism and shall set out in a written order findings that
2 justify the disposition of the application.

3 (b) Not later than 48 hours after being detained, the
4 material witness is entitled to a hearing before the circuit
5 judge who issued the order of detention to determine whether
6 further detention is necessary to prevent a failure of
7 justice. In order for the court to direct the continued
8 detention of the material witness, the court must issue a
9 written order of detention which contains findings that
10 justify the continued detention of the material witness.

11 (c) Evidence offered in support of an application for
12 an order of detention or offered at the hearing conducted to
13 determine whether further detention is necessary must be clear
14 and convincing.

15 (4) A person subject to possible temporary detention
16 under this section shall have the right to retain counsel
17 during the proceeding to determine whether such detention is
18 appropriate. If the person desires counsel but is indigent,
19 the court shall appoint counsel if it finds that the person is
20 indigent.

21 (5) Nothing contained in this section abrogates any
22 rights recognized by the courts under common law.

23 (6) This section expires July 1, 2004.

24 Section 2. A detention as a material witness in a
25 criminal investigation or other proceeding involving a
26 suspected or charged violation of state law relating to an act
27 of terrorism or in furtherance of an act of terrorism is not
28 an arrest for purposes of an employment application or
29 application for professional licensure.

30 Section 3. This act shall take effect upon becoming a
31 law.

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SENATE SUMMARY

Authorizes a circuit court judge to order the detention of a person for up to 4 days if that person's testimony is material in an investigation involving an act of terrorism. Requires that the judge issue a written order justifying the detention. Provides for a hearing within 48 hours after the person is detained. Requires that evidence supporting an application for an order of detention be clear and convincing. Provides for provisions authorizing detention as a material witness to expire July 1, 2004. Provides that detention as a material witness is not an arrest for purposes of employment or professional licensure.