

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 1428

INTRODUCER: Senator Altman

SUBJECT: Warrantless Arrests

DATE: March 6, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.			JU	
3.			JA	
4.				
5.				
6.				

**I. Summary:**

Senate Bill 1428 provides two additional exemptions to the general rule that in order to arrest a person for a misdemeanor (or non-felony) offense, the arresting law enforcement officer must have either witnessed the occurrence of the offense or obtained an arrest warrant prior to making the arrest. The bill would add Driving Under the Influence (DUI) offenses, which may be either a non-felony or a felony level offense depending upon prior convictions or other circumstances, and misdemeanor Exposure of Sexual Organs to the exemptions.

This bill substantially amends section 901.15 of the Florida Statutes.

**II. Present Situation:**

Section 901.15, F.S., sets forth the requirements for making a lawful arrest in felony and misdemeanor offenses. The general rule is that a law enforcement officer should actually witness the occurrence of a misdemeanor (or non-felony) offense in order to make a valid arrest for that crime or, in the alternative, obtain an arrest warrant.

In the normal course of business, in the case of a non-felony offense, a citizen/complainant will make a statement to the law enforcement officer setting forth the facts and the officer will forward his or her sworn complaint or probable cause affidavit to the State Attorney's office to be evaluated for a filing decision. Upon the filing of criminal charges by the State a warrant will then be issued by the Court which brings the defendant under the court's jurisdiction and begins the criminal process.

In certain instances, however, the Legislature has deemed particular non-felony offenses to be of such a nature that those crimes should be exceptions to the rule. Those crimes listed in s. 901.15, F.S., are: violations of injunctions for protection in domestic violence and dating violence situations as well as violations of pretrial release conditions in domestic violence cases; misdemeanor luring or enticing a child and child abuse; aggravated assault upon a law enforcement officer, firefighter and other listed persons; battery; criminal mischief or graffiti-related offenses; and violations of certain naval vessel protection zones or trespass in posted areas in airports.

Warrantless arrest for a violation of chapter 316, F.S., the DUI statute, is specifically addressed as follows:

A law enforcement officer may arrest a person without a warrant when:

(5) A violation of chapter 316 has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit. Any law enforcement officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air that a driver of a vehicle has violated chapter 316, may arrest the driver for violation of those laws when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer. *s. 901.15, F.S.*

DUI cases can be especially difficult to prove beyond a reasonable doubt. It must be proven that the defendant was driving or in actual physical control of a vehicle and, at such time, his or her normal faculties were impaired.

Identity of the driver could be in doubt unless a law enforcement officer can put the defendant behind the wheel. The defendant who is actually driving, stopped by the officer and arrested, after probable cause is established that DUI has occurred, will likely be videotaped by a dash-mounted camera or at the local jail during booking. These tapes, in addition to the officer's eyewitness testimony identifying the defendant as the person who was behind the wheel at the time the vehicle was stopped almost surely prove identity.

Proof of impairment can be shown by breath or blood-alcohol, evidence of driving erratically, performance of roadside sobriety exercises, or a combination. Proving these elements require a level of expertise that comes with training and observation, along with timing.

For instance, generally if a defendant is not stopped by law enforcement while behind the wheel of the vehicle, he or she could assert that there was no alcohol or other substance in his or her system at the time of driving. A defendant may actually not deny being impaired by alcohol, for example, two hours later, if this is the time of the first encounter with law enforcement but assert that all of the alcohol was just recently consumed, since the vehicle was parked. This kind of statement, and lack of evidence to the contrary, weakens not only a prosecutor's case, but probable cause for an arrest as well.

Subsection (5) of s. 901.15, F.S., allows a warrantless arrest when DUI is committed in an officer's presence or when information alleging a DUI is relayed from one officer who has "passed the baton" to another officer, keeping the vehicle in sight. This provision is, therefore, not technically an exception to the general rule since the offense is either committed in the arresting officer's presence or in the presence of another who has essentially relayed that "presence" to the arresting officer.

### **III. Effect of Proposed Changes:**

The bill provides for an arrest without a warrant, where there is probable cause, in cases of alleged Exposure of Sexual Organs and in cases of DUI. In DUI cases, this would effectively eliminate the requirement that a law enforcement officer witness the occurrence of the offense, as currently set forth in s. 901.15(5), F.S.

Where there has been an allegation of Exposure of Sexual Organs, under the provisions of the bill, probable cause for a warrantless arrest would not need to be established by the offense being committed in the presence of the officer. It is, therefore, likely that the officer would rely upon eyewitness statements or the offender's admission to form the necessary probable cause to make an arrest.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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