

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 6013 Breach of the Peace  
**SPONSOR(S):** Criminal Justice Subcommittee, Byrd and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	6 Y, 3 N, As CS	Hall	White
2) Judiciary Committee			

### SUMMARY ANALYSIS

Section 933.14, F.S., requires law enforcement to retain a pistol or firearm until a court orders its return when the pistol or firearm was taken either:

- Pursuant to a search warrant; or
- Without a search warrant, by an officer upon viewing a breach of the peace.

Florida law classifies a breach of the peace broadly. Section 877.03, F.S., prohibits a breach of the peace as a second degree misdemeanor. Additionally, other Florida Statutes include provisions relating to a "breach of the peace," without defining the term. When not defined by statute, Florida courts have looked to the common law meaning of the term finding it is a generic term including all violations of the public peace, order, or decorum.

Some law enforcement agencies have cited to the authority under s. 933.14, F.S., to retain firearms seized pursuant to a Baker Act (Florida's Mental Health Act), in the absence of a criminal arrest or charges. In 2016, a Florida court held that s. 933.14, F.S., did not require *or permit* law enforcement agencies to retain firearms taken in response to a safety call that did not result in a criminal investigation or charges. The court determined that the behavior of exhibiting mental health symptoms does not qualify as a violation of law constituting a breach of the peace.

The bill repeals s. 933.14(3), F.S., requiring a court order prior to the return of a pistol or firearm that was taken without a warrant, upon viewing a breach of the peace. Law enforcement will no longer have the authority to retain firearms impounded upon viewing a breach of the peace, unless a different law independently provides the authority for the firearm's retention.

The bill provides it is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### *Law Enforcement Retention of Firearms*

In Florida, law enforcement agencies are required to take possession of any firearms found on a person pursuant to an arrest and must retain the firearm until after the disposition of the case.<sup>1</sup> If the person is later acquitted or the charges against them are dismissed, the person is entitled to the return of his or her firearm.<sup>2</sup> If a person has been arrested for committing or attempting to commit a felony offense while carrying, displaying, using, threatening, or attempting to use a firearm,<sup>3</sup> the firearm is automatically forfeited to the state if the person is later convicted of the offense.<sup>4</sup>

Additionally, s. 933.14, F.S., requires law enforcement to retain firearms that have been confiscated under other specific circumstances. A firearm must be retained by law enforcement until there is a court order for its return when the weapon was taken either:

- Pursuant to a search warrant; or
- Without a search warrant, by an officer upon viewing a breach of the peace.

Florida law classifies a breach of the peace broadly. Section 877.03, F.S., criminalizes a breach of the peace<sup>5</sup> as a second degree misdemeanor.<sup>6</sup> Additionally, other Florida statutes include provisions relating to a “breach of the peace,” without defining the term.<sup>7</sup> When not defined by statute, Florida courts have looked to the common law meaning of the term finding it is a “generic term including all violations of the public peace, order or decorum.”<sup>8</sup>

Some law enforcement agencies have cited to s. 933.14, F.S., to retain the firearms of persons they encounter related to an involuntary commitment under Florida’s Baker Act.<sup>9</sup> In 2009, the Florida Attorney General’s Office issued an advisory opinion addressing law enforcement’s authority to retain firearms taken from a person sent for evaluation under the Baker Act.<sup>10</sup> The opinion concluded that if a person is taken for an evaluation under the Baker Act, but is not arrested or charged for a criminal offense of any kind, a law enforcement agency is *not* authorized to retain firearms taken from that person.

###### *Firearms Preemption*

In the state of Florida, except as expressly provided in the Constitution or general law, the Legislature occupies the whole field of the regulation of firearms.<sup>11</sup> As such, no county, city, town, or municipal

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<sup>1</sup> “Every officer making an arrest under s. 790.07, or under any other law or municipal ordinance within the state, shall take possession of any weapons, electric weapons or devices, or arms mentioned in s. 790.07 found upon the person arrested and deliver them to the sheriff of the county, or the chief of police of the municipality wherein the arrest is made, who shall retain the same until after the trial of the person arrested.” s. 790.08(1), F.S.

<sup>2</sup> s. 790.08(3), F.S.

<sup>3</sup> See s. 790.07(2), F.S.

<sup>4</sup> s. 790.08(2), F.S.

<sup>5</sup> “Whoever commits such acts as are of a nature to corrupt the public morals; or outrage the sense of public decency; or affect the peace and quiet of persons who may witness them; or engages in brawling or fighting; or engages in such conduct as to constitute a breach of the peace or disorderly conduct commits a second degree misdemeanor.” s. 877.03, F.S.

<sup>6</sup> A second degree misdemeanor is punishable by up to 60 days in the county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>7</sup> For example, ss. 870.02 and 790.02, F.S., relating to unlawful assemblies and an officers right to arrest without a warrant and upon probable cause, respectively, prohibit certain conduct related to a breach of the peace.

<sup>8</sup> *Edwards v. State*, 462 So. 2d 581, 583 (Fla. 4th 1985).

<sup>9</sup> Also known as “The Florida Mental Health Act”, it provides for emergency service and temporary detention for evaluation when required. s. 394.453(1)(b)(1), F.S.

<sup>10</sup> *Op. Att’y Gen. Fla.* 09-04, 2009 Fla. AG LEXIS 5 (2009).

<sup>11</sup> s. 790.33(1), F.S.

ordinances or administrative regulations or rules may be adopted by local or state government relating to the regulation of firearms. If such entities enact or enforce a local ordinance or an administrative rule or regulation that impinges upon the Legislature's occupation of this field they may be fined up to \$5,000,<sup>12</sup> and such a violation may be cause for termination from employment.<sup>13</sup> Section 790.33, F.S., also permits any person who is adversely affected by any policy promulgated in violation of the law to file suit against the entity enforcing such a policy for declaratory and injunctive relief and for actual damages.<sup>14</sup>

#### *Dougan v. Bradshaw*

This appeal resulted from a trial court's dismissal of a lawsuit brought under s. 790.33, F.S., challenging a local Sheriff's policy of retaining firearms taken as a result of a safety check.<sup>15</sup> Following the safety check in this case, the appellant was not arrested, nor was he involuntarily committed or taken for an examination pursuant to the Baker Act. Nevertheless, his lawfully owned firearm was taken by law enforcement who later declined to return it without a court order, citing to the purported authority of s. 933.14, F.S.

Relying on the legislative intent of the Baker Act,<sup>16</sup> as well as the Florida Attorney General opinion discussed *supra*, the court found that persons do not commit a breach of the peace constituting a violation of the law simply for exhibiting symptoms related to mental health issues.<sup>17</sup> The court further held that s. 933.14, F.S., did not require *or permit* law enforcement agencies to retain firearms that were taken "in response to a safety call which did not result in a criminal investigation or charges."<sup>18</sup> The trial court's dismissal was reversed because the appellant had sufficiently alleged that the local Sheriff's policy of retaining firearms was not authorized by existing statute and had been enforced against him, sufficiently pleading a cause of action under s. 790.33, F.S.

#### **Effect of Bill**

The bill repeals s. 933.14(3), F.S., requiring a court order before the return of a pistol or firearm that was taken without a warrant, upon viewing a breach of the peace. Law enforcement will no longer have the authority to retain weapons taken upon viewing a breach of the peace, unless a different law independently provides the authority for the firearm's retention.

The bill provides it takes effect upon becoming law.

#### **B. SECTION DIRECTORY:**

Section 1: Amending s. 933.14, F.S., relating to return of property taken under search warrant.

Section 2: Providing an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: It does not appear that this bill will have an impact on state government revenues.

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<sup>12</sup> s. 790.33(3)(c), F.S.

<sup>13</sup> s. 790.33(3)(e), F.S.

<sup>14</sup> Section 790.33(3)(f)2., F.S., authorizes the recovery of actual damages incurred, but not more than \$100,000.

<sup>15</sup> *Dougan v. Bradshaw*, 198 So. 3d 878, 880 (Fla. 4th 2016).

<sup>16</sup> The court relied on portions of the Baker Act which direct that procedures, facilities, vehicles, and restraining devices used in connection with those accused of a crime shall not be used in connection with those who have a mental illness, except for the protection of the patient or others. s. 394.459(1), F.S.

<sup>17</sup> *Dougan v. Bradshaw*, 198 So. 3d 878, 882 (Fla. 4th 2016).

<sup>18</sup> *Id.*

2. Expenditures: It does not appear that the bill will have an impact on state government expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: It does not appear that the bill will have an impact on local government revenues.

2. Expenditures: It does not appear that this bill will have an impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** None.

**D. FISCAL COMMENTS:** None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: None.

2. Other: None.

**B. RULE-MAKING AUTHORITY:** This bill does not appear to create the need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:** None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 28, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS removed the bill's repeal of:

- The crime of breach of peace codified by s. 877.03, F.S.; and
- The "breach of peace" language in s. 321.05, F.S., which authorizes a Florida Highway Patrol officer to make a warrantless arrest for a breach of the peace.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.