

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 116

INTRODUCER: Rules Committee and Senator Stewart

SUBJECT: Motor Vehicle Racing

DATE: April 23, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	Favorable
2.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3.	<u>Farach</u>	<u>Cibula</u>	<u>JU</u>	Favorable
4.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 116 allows an officer to warrantlessly arrest a person if the officer has probable cause to believe he or she committed a violation of s. 316.191(2), F.S., which prohibits any form of participation in motor vehicle racing. The bill removes the requirement that an officer either witness the offense and arrest immediately or in fresh pursuit, or secure an arrest warrant.

The bill may have a positive insignificant impact on the number jail beds.

The bill is effective July 1, 2019.

II. Present Situation:

Motor vehicle racing is a professional and amateur automobile sport practiced throughout the world, which includes drag racing.¹ A drag race is an acceleration contest from a standing start between two vehicles over a measured distance.² Drag racing began in the California deserts,

¹ Encyclopedia Britannica, *Automobile Racing*, available at <https://www.britannica.com/sports/automobile-racing> (last visited February 21, 2019).

² National Hot Rod Association, *NHRA 101*, available at <https://www.nhra.com/nhra-101> (last visited February 21, 2019).

with the first organized event dating back to 1949.³ Legal drag races take place on monitored drag strips or racetracks.⁴

In contrast, illegal drag racing takes place on highways. Videos of these races depict drivers either taking off from a rolling start or coming to a complete stop on the highway and then taking off. Specifically, in Broward County, dragsters make their way to “The Spot,” a stretch of highway US-27, to race their cars up to speeds of 140 mph or better. Racers use cameras with microphones and drones to get footage of the races to post to websites. The dangers of these races is apparent from the videos – there is no concrete median separating the lanes and a flat tire or debris in the road could have fatal consequences.⁵

Drag racing encourages cars to reach unsafe speeds, which has prompted the adoption of laws regulating or prohibiting it. Specifically, s. 316.191(2), F.S., prohibits a person from doing any of the following:

- Driving any motor vehicle, including any motorcycle, in any race,⁶ speed competition or contest, drag race⁷ or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;
- Participating in, coordinating, facilitating, or collecting money at any location for any such race, competition, contest, test, or exhibition;
- Knowingly riding as a passenger in any such race, competition, contest, test, or exhibition; or
- Purposefully causing the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.⁸

Any person who violates s. 316.191(2), F.S., commits a first degree misdemeanor.⁹ However, additional fines and penalties increase for subsequent violations. For example:

³ PBS, *Drag Racing*, available at <http://www.pbs.org/opb/historydetectives/feature/drag-racing/> (last visited February 21, 2019).

⁴ Driving Line, *Drag Racing 101: Understanding the Basics of 1320 Racing* (July 24, 2015), available at <https://www.drivingline.com/articles/drag-racing-101-understanding-the-basics-of-1320-racing/> (last visited February 21, 2019).

⁵ Jim DeFede, CBS Miami, *An Inside Look at Broward County’s Illegal Drag Racing*, (May 1, 2018), available at <https://miami.cbslocal.com/2018/05/01/broward-illegal-drag-racing/> (last visited February 21, 2019).

⁶ “Race” means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race. Section 316.191(1)(c), F.S.

⁷ “Drag race” means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit. Section 316.191(1)(b), F.S.

⁸ Section 316.191(2)(a)-(d), F.S. Section 316.191, F.S., does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes. Section 316.191(7), F.S.

⁹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year, a fine of \$1,000, or both. Sections 775.082 and 775.083, F.S.

- A first-time violation is punishable with a fine of not less than \$500 and not more than \$1,000, and a revocation of one's driver's license for 1 year.
- A second violation within 5 years of a prior violation is punishable with a fine of not less than \$1,000 and not more than \$3,000, and a revocation of one's driver's license for 2 years.
- A third or subsequent violation within 5 years of a prior violation is punishable with a fine of not less than \$2,000 and not more than \$5,000, and a revocation of one's driver's license for 4 years.¹⁰

A law enforcement officer may immediately arrest a person who has engaged in a race.¹¹ Any motor vehicle that was used in unlawful racing may be impounded for 30 days, if the person who is arrested and taken into custody for the unlawful racing is the registered owner or co-owner of the vehicle.¹²

Warrantless Arrest

A judge may issue a warrant authorizing a person's arrest upon finding probable cause that he or she committed a crime in the judge's jurisdiction.¹³ The United States Supreme Court has held that the Fourth Amendment to the United States Constitution does not forbid warrantless arrest, however, even for a misdemeanor offense.¹⁴

In Florida, a law enforcement officer may arrest a person without a warrant under statutorily enumerated circumstances,¹⁵ such as when:

- An officer reasonably believes a person committed a felony.
- A person commits a misdemeanor in an officer's presence.
 - In this circumstance, the officer must arrest the person immediately or in fresh pursuit after observing the offense.
- There is probable cause to believe a person has committed certain enumerated misdemeanor offenses, such as a battery, criminal mischief or graffiti, an act of domestic violence, an injunction violation, or sexual cyberharassment.

An officer may warrantlessly arrest a person who violates the Florida Uniform Traffic Control Law¹⁶ in the presence of the officer.¹⁷ As with other warrantless misdemeanor arrests, the officer must arrest the person immediately or in fresh pursuit after viewing the offense.¹⁸ A fellow officer who did not personally witness the offense may also arrest a person based on the witnessing officer's observations.¹⁹ Thus, to arrest for a racing offense, an officer must:

- Witness the offense and arrest either immediately or in fresh pursuit;

¹⁰ Section 316.191(3)(a)-(c), F.S. In all instances of a violation that results in the subsequent revocation of a person's driver's license, he or she may request a hearing pursuant to s. 322.271, F.S.

¹¹ Section 316.191(5), F.S.

¹² Section 316.191(5)(c), F.S.

¹³ Section 901.02, F.S.

¹⁴ *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

¹⁵ Section 901.15, F.S.

¹⁶ Chapter 316, F.S.

¹⁷ Section 901.15(5), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

- Arrest pursuant to a fellow officer's observations and arrest either immediately or in fresh pursuit; or
- Secure an arrest warrant.

The exception only for offenses occurring in the presence of an officer prohibits a warrantless arrest based only on a civilian witness's report. For example, if a witness calls police about a spontaneous street race, the race may likely end before police respond; however, obtaining an arrest warrant to timely address the complaint is often impractical.

III. Effect of Proposed Changes:

The bill allows an officer to warrantlessly arrest a person if the officer has probable cause to believe he or she committed a racing offense. The bill lifts the requirement that an officer either:

- Witness the offense and arrest immediately or in fresh pursuit; or
- Secure an arrest warrant.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

The bill may have a positive insignificant impact on the number of jail beds by enabling officers to warrantlessly arrest racing offenders.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends sections 316.191 and 901.15 of the Florida Statutes.

IX. **Additional Information:**

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

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

CS by Rules on April 23, 2019:

The CS removed a felony enhancement for a third or subsequent racing offense in five years and authorized a law enforcement officer to arrest a person, without a warrant, if there is probable cause to believe that the person committed a racing violation.

B. **Amendments:**

None.