

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 611 Motor Vehicle Racing
SPONSOR(S): Criminal Justice Subcommittee, Mercado
TIED BILLS: **IDEN./SIM. BILLS:** SB 116

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Bruno	Hall
2) Judiciary Committee	17 Y, 0 N	Bruno	Poche

SUMMARY ANALYSIS

Street-racing involves cars, motorcycles, and other motor vehicles engaging in prearranged or spontaneous competitions on the roadways. The practice endangers participants, bystanders, and property. In 2018, street-racers struck and killed a 24-year-old woman and her toddler daughter as they were walking with a stroller along Bayshore Boulevard in Tampa. Safer alternatives to illegal street-racing, such as sanctioned racing events at the Central Florida Racing Complex in south Orlando and the Countyline Dragway in Medley, once successfully curbed street-racing, but the raceways have since closed.

Florida law prohibits the following unsanctioned racing activities on a highway, roadway, or parking lot:

- Driving a motor vehicle, including a motorcycle, in a race or other competition;
- Participating in, coordinating, facilitating, or collecting money at a race or other competition location;
- Knowingly riding as a passenger in a race or other competition; or
- Purposefully stopping or slowing traffic movement for a race or other competition.

A racing violation is a first degree misdemeanor, punishable by up to one year in county jail and specified mandatory fines. An officer may warrantlessly arrest a person for a misdemeanor committed in his or her presence if the officer arrests the person immediately or in fresh pursuit after viewing the offense. In the case of a traffic offense, a fellow officer who did not personally witness the offense may also arrest a person based on the witnessing officer's observations. Thus, to arrest for a racing offense, an officer must:

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

CS/HB 611 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 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 has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Street-racing involves cars, motorcycles, and other motor vehicles engaging in prearranged or spontaneous competitions on the roadways. The practice endangers participants, bystanders, and property. In 2018, street-racers struck and killed a 24-year-old woman and her toddler daughter as they were walking with a stroller along Bayshore Boulevard in Tampa.¹ Safer alternatives to illegal street-racing, such as sanctioned racing events at the Central Florida Racing Complex in south Orlando and the Countyline Dragway in Medley, once successfully curbed street-racing,² but the raceways have since closed.³ In recent years, Orlando has seen an increase in illegal street-racing, prompting the sheriff to create an anti-street-racing detail in March 2018.⁴ Orange County sheriff's deputies made the following numbers of arrests relating to illegal street racing:

- 152 in 2016.
- 226 in 2017.
- 199 in 2018.⁵

Florida Law

Racing Offenses

Under Florida law, a “race” involves one or more motor vehicles in competition to demonstrate the superiority of a vehicle or driver by:

- Attempting to outgain or outdistance another motor vehicle;
- Preventing another motor vehicle from passing;
- Arriving at a given destination before another motor vehicle; or
- Testing the physical stamina or endurance of drivers over a long-distance.⁶

Participants may prearrange or engage spontaneously in a race.⁷ The race consists of a challenge and acceptance or competitive response to the challenge.⁸ A “drag race” is a specific type of race in which participants compare relative speeds or power of acceleration over a specific distance;⁹ drag racing usually involves two motor vehicles operating side-by-side.¹⁰

¹ Tim Fanning, *Bayshore race claims two lives: child dies day after mother's death*, Tampa Bay Times (May 24, 2018), https://www.tampabay.com/news/publicsafety/accidents/Bayshore-race-claims-two-lives-child-dies-day-after-mother-s-death_168532289 (last visited Apr. 3, 2019).

² Steven Cole Smith, *Drag-strip owner is driving force for safer streets*, Orlando Sentinel (Mar. 8, 2010), <http://www.orlandosentinel.com/news/os-xpm-2010-03-08-os-street-racing-course-owner-20100308-story.html> (last visited Apr. 3, 2019).

³ WSVN News Miami, *Need for Speed* (Sep. 27, 2016), <https://wsvn.com/news/investigations/need-for-speed/> (last visited Apr. 3, 2019).

⁴ Joe Mario Pedersen, *As street racing in Orange County revs up, leaders push to strengthen laws, offer alternatives*, Orlando Sentinel (Feb. 11, 2019), <http://www.orlandosentinel.com/news/os-xpm-2010-03-08-os-street-racing-course-owner-20100308-story.html> (last visited Apr. 3, 2019).

⁵ *Id.*

⁶ S. 316.191(1)(c), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ S. 316.191(1)(b), F.S.

¹⁰ National Hot Rod Association, *Basics of Drag Racing*, <http://www.nhra.com/nhra101/basics.aspx> (last visited Apr. 3, 2019).

Florida law prohibits the following racing activities on any highway, roadway, or parking lot, unless sanctioned by the proper authorities:¹¹

- Driving a motor vehicle, including a motorcycle, in a:
 - Race;
 - Speed competition or contest;
 - Drag race;
 - Test of physical endurance;
 - Exhibition of speed or acceleration; or
 - Exhibition for making a speed record;¹²
- Participating in, coordinating, facilitating, or collecting money at a race, competition, test, or exhibition location;
- Knowingly riding as a passenger in a race, competition, test, or exhibition; or
- Purposefully stopping or slowing traffic movement for a race, competition, test, or exhibition.¹³

A racing violation is a first degree misdemeanor,¹⁴ punishable by up to one year in county jail.¹⁵ A court must impose the following penalties for a:

- Violation with no prior convictions in the preceding five years, a fine of \$500 to \$1,000 and one year driver license suspension.
- Second violation within five years of a prior violation resulting in a conviction, a fine of \$1,000 to \$3,000 and a two year driver license suspension.
- Third or subsequent violation within five years of a prior violation resulting in a conviction, a fine of \$2,000 to \$5,000 and a four year driver license suspension.¹⁶

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.¹⁷ 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.¹⁸

In Florida, a law enforcement officer may arrest a person without a warrant under statutorily enumerated circumstances,¹⁹ 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 Law²⁰ in the presence of the officer.²¹ As with other warrantless misdemeanor arrests, the officer must arrest the person immediately or in fresh pursuit after viewing the offense.²² A fellow officer who did not personally

¹¹ S. 316.191(7), F.S.

¹² S. 316.191(2), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ S. 775.082, F.S.

¹⁶ S. 316.191(3), F.S.

¹⁷ S. 901.02, F.S.

¹⁸ *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

¹⁹ S. 901.15, F.S.

²⁰ Ch. 316, F.S.

²¹ S. 901.15(5), F.S.

²² *Id.*

witness the offense may also arrest a person based on the witnessing officer's observations.²³ Thus, to arrest for a racing offense, an officer must:

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

Effect of Proposed Changes

CS/HB 611 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 provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.191, F.S., relating to racing on highways.

Section 2: Amends s. 901.15, F.S., relating to when arrest by officer is lawful.

Section 3: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

²³ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed a felony enhancement for a third or subsequent racing offense in five years.
- 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.

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