

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1379 Arrests  
**SPONSOR(S):** Jones  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Padgett	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Generally, a law enforcement officer may arrest a person without a warrant when:

- The person has committed a felony or misdemeanor in the officer's presence.
- A felony has been committed and the officer reasonably believes the person committed the felony.
- The officer reasonably believes a felony has been or is being committed and the officer believes the person to be arrested has committed or is committing it.
- An arrest warrant has been issued and is being held by another officer.
- The criminal offense which is the basis for the arrest is included in the list of offenses for which a warrantless arrest is permitted.

Following a criminal investigation, if a law enforcement officer determines that probable cause exists to arrest a person but none of the above circumstances apply, a law enforcement officer is required to seek an arrest warrant prior to taking a person into custody. To obtain an arrest warrant, an officer is required to complete an affidavit describing the probable cause that exists for the officer to believe a person has committed, or is committing, a criminal offense. The officer then submits the affidavit to a judge, who reviews it for legal sufficiency. If the judge finds that probable cause exists, the judge issues an arrest warrant with a bond amount.

Section 790.22, F.S., prohibits:

- A minor under 18 from possessing a firearm, subject to certain exceptions;
- A minor under 16 from possessing a BB gun, air or gas operated gun, or electric weapon; and
- A parent, guardian, or other adult who is responsible for the minor's welfare from allowing the minor to possess a firearm or prohibited weapon or device.

HB 1379 authorizes a law enforcement officer who has probable cause to believe a minor is in possession of a firearm or other prohibited weapon to arrest the minor without a warrant. Eliminating the arrest warrant process for this offense will allow law enforcement to quickly respond to a report of a minor in possession of a firearm and allow an officer to take a minor into custody even if the minor is not in possession of a firearm when law enforcement responds to the call.

The bill may have an insignificant bed impact on the Department of Corrections, Department of Juvenile Justice, and county detention facilities by making it easier to arrest a minor who is illegally possessing a firearm, or an adult who permits a minor to possess a firearm.

The bill provides an effective date of October 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Warrantless Arrest

Generally, a law enforcement officer may arrest a person without a warrant when:

- The person has committed a felony or misdemeanor in the officer's presence.
  - The arrest must be made immediately or in fresh pursuit.<sup>1</sup>
- A felony has been committed and the officer reasonably believes the person committed the felony.<sup>2</sup>
- The officer reasonably believes a felony has been or is being committed and the officer believes the person to be arrested has committed or is committing it.<sup>3</sup>
- An arrest warrant has been issued and is being held by another officer.<sup>4</sup>

However, there are many exceptions to these general rules. A law enforcement officer may make a warrantless arrest, where there is probable cause to believe that a person has committed one of the following offenses:

- A traffic offense in ch. 316, F.S.;<sup>5</sup>
- A violation of an injunction for protection against domestic violence, dating violence, sexual violence, repeat violence, exploitation of a vulnerable adult, or a foreign protection order;<sup>6</sup>
- An act of domestic violence or dating violence;<sup>7</sup>
- Child abuse or luring or enticing a child for unlawful purposes;<sup>8</sup>
- Battery;<sup>9</sup>
- Criminal mischief or graffiti-related offenses;<sup>10</sup>
- A violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone;<sup>11</sup>
- A racing violation as described in s. 316.191(2), F.S.;<sup>12</sup>
- An act that violates a condition of pretrial release for a domestic violence or dating violence offense;<sup>13</sup>
- Trespass in a posted secure area of an airport;<sup>14</sup>
- Assault upon a law enforcement officer, a firefighter, an emergency medical care provider, a public transit employee or agent, or another officer specified in s. 784.07, F.S., who is engaged in the lawful performance of his or her duties;<sup>15</sup>
- Assault or battery upon an employee of a receiving facility as defined in s. 394.455(39), F.S., who is engaged in the lawful performance of his or her duties;<sup>16</sup> and
- A criminal act of cyberharassment as described in s. 784.049, F.S.<sup>17</sup>

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<sup>1</sup> S. 901.15(1), F.S.

<sup>2</sup> S. 901.15(2), F.S.

<sup>3</sup> S. 901.15(3), F.S.

<sup>4</sup> S. 901.15(4), F.S.

<sup>5</sup> The officer may make an arrest immediately, in fresh pursuit, or may relay information to another officer to make the arrest. S. 901.15(5), F.S.

<sup>6</sup> S. 901.15(6), F.S.

<sup>7</sup> S. 901.15(7), F.S.

<sup>8</sup> S. 901.15(8), F.S.

<sup>9</sup> S. 901.15(9), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> S. 901.15(13), F.S.

<sup>14</sup> S. 901.15(14), F.S.

<sup>15</sup> S. 901.15(15), F.S.

<sup>16</sup> *Id.*

## Arrest Warrant Procedure

Following a criminal investigation, if a law enforcement officer determines that probable cause exists to arrest a person but none of the above circumstances apply, a law enforcement officer is required to seek an arrest warrant prior to taking a person into custody. To obtain an arrest warrant, an officer must complete an affidavit describing the probable cause that exists for the officer to believe a person has committed, or is committing a criminal offense.<sup>18</sup> The officer then submits the affidavit to a judge, who reviews it for legal sufficiency. If the judge finds that probable cause exists, the judge issues the arrest warrant with a bond amount.<sup>19</sup> The warrant is then sent to each sheriff for execution.<sup>20</sup>

## Minor in Possession of a Firearm or Other Weapons

### *Possession of a Firearm by a Minor*

Section 790.22, F.S., prohibits a person under 18 from possessing a firearm<sup>21</sup> unless:

- The minor is engaged in a lawful hunting activity and is at least 16 years old; or is under 16 years old and supervised by an adult;
- The minor is engaged in a lawful marksmanship competition and is at least 16 years old; or is under 16 years old and supervised by an adult acting with the consent of the minor's guardian;
- The firearm is unloaded and being transported to a hunting activity or marksmanship competition; or
- The firearm is unloaded and possessed by the minor at his or her home.<sup>22</sup>

A minor who unlawfully possesses a firearm commits a first degree misdemeanor.<sup>23</sup> For a second or subsequent violation, the minor commits a third degree felony.<sup>24</sup> A parent, guardian, or other adult responsible for the welfare of a minor who knowingly and willfully allows the minor to possess a firearm commits a third degree felony.

### *Use of BB Guns, Air or Gas Operated Guns, or Electric Weapons by a Minor Under 16*

A minor under the age of 16 is prohibited from using a BB gun, an air or gas operated gun, or an electric weapon<sup>25</sup> unless the minor is under the supervision of an adult acting with the consent of the minor's parent.

An adult responsible for the welfare of a child under 16 who knowingly permits the child to use or possess a BB gun, an air or gas operated gun, or an electric weapon commits a second degree misdemeanor.<sup>26</sup>

## **Effect of Proposed Changes**

HB 1379 authorizes a law enforcement officer who has probable cause to believe a minor is in possession of a firearm or other prohibited weapon to arrest the minor without a warrant. Eliminating the arrest warrant process for this offense will allow law enforcement to quickly respond to a report of a

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<sup>17</sup> S. 901.15(16), F.S.

<sup>18</sup> S. 901.02, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> S. 901.04, F.S.

<sup>21</sup> "Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. S. 790.001(6), F.S.

<sup>22</sup> S. 790.22(3), F.S.

<sup>23</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>24</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>25</sup> "Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury. S. 790.001(14), F.S.

<sup>26</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

minor in possession of a firearm and allow an officer to take a minor into custody even if the minor is not in possession of a firearm when law enforcement responds to the call.

The bill provides an effective date of October 1, 2020.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 901.15, F.S., related to when arrest by officer without warrant is lawful.

**Section 2:** Provides an effective date of October 1, 2020.

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

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill may have an insignificant bed impact on the Department of Corrections, Department of Juvenile Justice, and county detention facilities by making it easier to arrest a minor illegally possessing a firearm, or an adult who permits a minor to possess a firearm.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, s. 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**