

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 Criminal Justice

BILL: SB 1248

INTRODUCER: Senator Steube

SUBJECT: Breach of the Peace

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon/Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1248 amends s. 877.03, F.S., which punishes breach of the peace and disorderly conduct. The bill removes reference to “breach of the peace” and several acts prohibited under the statute. As a result of these changes, s. 877.03, F.S., will only punish engaging in brawling or fighting or engaging in conduct that constitutes disorderly conduct.

The bill amends s. 321.05, F.S., to remove reference to “breach of the peace.” As a result of this change, the Florida Highway Patrol will no longer have a common-law right to arrest a person who, in the presence of the officer, commits a breach of peace.

The bill also repeals s. 933.14(3), F.S., which prohibits return of a pistol or firearm without a trial court order if the pistol or firearm was taken by an officer:

- With a search warrant; or
- Without a search warrant upon a view by the officer of a breach of the peace.

Because breach of the peace is a misdemeanor offense, the bill does not have a prison bed impact.

II. Present Situation:

Breach of the Peace or Disorderly Conduct

Section 877.03, F.S., provides that it is a second degree misdemeanor¹ to:

- Commit “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”;

¹ A second degree misdemeanor is punishable by up to 60 days in jail, a fine of up to \$500, or both jail and a fine. Sections 775.082 and 775.083, F.S.

- Engage in brawling or fighting; or
- Engage in “such conduct as to constitute a breach of the peace or disorderly conduct.”

Because the statute does not define the terms “breach of peace” and “disorderly conduct,” it is unclear if the terms are effectively synonymous in their meaning. One court has described “breach of peace” as “a generic term including all violations of the public peace, order, or decorum. A breach of the peace includes the violation of any law enacted to preserve peace and good order.”²

Florida Highway Patrol’s Common-Law Right to Make an Arrest for a Breach of the Peace

Section 321.05, F.S., provides, in part, that members of the Florida Highway Patrol have the common-law right to arrest a person, who in the presence of the arresting officer, commits a breach of peace constituting a misdemeanor.

Return of Pistol or Firearm Seized Due to Officer’s View of a Breach of the Peace

Section 933.14(3), F.S., prohibits return of a pistol or firearm without a trial court order if the pistol or firearm was taken by an officer:

- With a search warrant; or
- Without a search warrant upon a view by the officer of a breach of the peace.

III. Effect of Proposed Changes:

Section 1 of the bill removes reference to “breach of the peace” in s. 877.03, F.S., which currently proscribes committing certain acts or engaging in such conduct as to constitute a breach of the peace or disorderly conduct. It also removes reference to the following acts that currently constitute violations of the statute:

- Acts of a nature to corrupt the public morals;
- Acts that outrage the sense of public decency; and
- Acts that affect the peace and quiet of persons who may witness them.

As amended, s. 877.03, F.S., will only prohibit a person from engaging in brawling or fighting or engaging in conduct that constitutes disorderly conduct.

Section 2 of the bill amends s. 321.05, F.S., to remove the reference to “breach of the peace.” This change effectively removes the Florida Highway Patrol’s common-law right to arrest a person who, in the presence of the officer, commits a breach of peace.

Section 3 of the bill repeals s. 933.14(3), F.S., which prohibits return of a pistol or firearm without a trial court order if the pistol or firearm was taken by an officer:

- With a search warrant; or
- Without a search warrant upon a view by the officer of a breach of the peace.

² *Edwards v. State*, 462 So.2d 581, 583 (Fla. 4th DCA 1985) (citations omitted).

The prohibition on returning a pistol or firearm without a trial court order if the pistol or firearm was taken by an officer with a search warrant does not apply exclusively to the offense of breach of the peace. Therefore, its repeal impacts the process of returning a seized pistol or firearm in *all* cases in which a search warrant was issued and a pistol or firearm was taken by an officer, not simply in breach of peace cases.

Article III, section 6, of the Florida Constitution provides, in part, that every law must embrace but one subject and matter that is “properly connected” with the subject. “A connection between a provision and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.”³

Section 4 of the bill provides the bill takes effect upon becoming a law.

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:

Because breach of the peace is a misdemeanor offense, the bill does not have a prison bed impact.

VI. Technical Deficiencies:

None.

³ *Franklin v. State*, 887 So. 2d 1063, 1078 (Fla. 2004).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 877.03, 321.05, and 933.14.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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