

STORAGE NAME: h3759.cp

DATE: March 21, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3759

RELATING TO: Arrests

SPONSOR(S): Representative Trovillion

COMPANION BILL(S): SB 910 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends s. 901.02 by providing that the court may issue a warrant for arrest which provides for release upon recognizance for any misdemeanor offense, if a summons is returned unserved.

The bill creates s. 901.36, **Prohibition against giving false name or false identification by person arrested or lawfully detained; penalties; court orders.**

The new law prohibits any person who has been arrested or lawfully detained by a law enforcement officer from giving a false name, or otherwise falsely identifying himself. This law is punished as a 1st-degree misdemeanor.

- The offense is punished as a 3rd-degree felony if the false name given to law enforcement is actually the real name of another person.
- The new law further provides that a court may award restitution if the offense has resulted in that other person being inconvenienced by the offender's use of their name.
- Finally, the new law authorizes courts to issue such orders as are necessary to correct any public record which resulted from the offense.

The bill's effective date is July 1 of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Arrest Warrants

Section 901.02, F.S., provides as follows:

A warrant may be issued for the arrest of the person complained against if the magistrate, after examination of the complainant and other witnesses, reasonably believes that the person complained against has committed an offense within the magistrate's jurisdiction.

Thus, the court may issue a warrant for a person's arrest for any misdemeanor or felony complaint. Typically, the warrant is based solely on a sworn statement by a law enforcement officer.

Summons To Appear

Even though a court is empowered to issue an arrest warrant for a misdemeanor, s. 901.09, F.S., provides in part:

(2) When the complaint is for a misdemeanor that the magistrate is not empowered to issue a warrant for, the magistrate shall issue a summons instead of a warrant if she or he reasonably believes that the person against whom the complaint was made will appear upon a summons.

All misdemeanors are criminal offenses punishable by up to 1-year in jail. See, s. 775.082(4), F.S. No person may be sentenced to jail for a criminal offense without being tried by a jury of his peers. See, Article I, Section 16, the Florida Constitution.

A Warrant May Be Issued After a Summons Is Returned Unserved

Even though a summons should be issued for most misdemeanor offenses, s. 901.11 provides, in part:

When a person fails to appear as commanded by a summons, the magistrate shall issue a warrant. **If the magistrate acquires reason to believe that the person summoned will not appear as commanded after issuing a summons, the magistrate may issue a warrant.**

Thus, when a court believes a person is avoiding service of a summons, resulting in the summons being returned unserved, the court is free to issue an arrest warrant for any misdemeanor offense.

Giving False Name Upon Arrest

It is not uncommon for arrested persons to give police officers false names in order to hide the fact that they are wanted on other charges, or by other states. It is possible for a dangerous fugitive to be arrested on a minor charge and released, never to return, by

being booked under a false name. Current law requires police to charge a person who gives a false name with the crimes of Resisting an Officer Without Violence, Providing a False Report To Law Enforcement Authorities. All of these crimes require the state to prove more than the offender falsely identified themselves. For example, the crime of providing a false report requires that the state prove that the offender provided such false information "regarding the alleged commission of any crime."

B. EFFECT OF PROPOSED CHANGES:

Section 1. of the Bill

The bill amends s. 901.02, F.S., by providing that the court may issue a warrant for arrest which provides for release upon recognizance for any misdemeanor offense, if a summons is returned unserved.

Section 2. of the Bill

The bill creates s. 901.36, F.S., **Prohibition against giving false name or false identification by person arrested or lawfully detained; penalties; court orders.**

The new law prohibits any person who has been arrested or lawfully detained by a law enforcement officer from giving a false name, or otherwise falsely identifying himself. This law is punished as a misdemeanor of the first degree (maximum, 60 days jail and \$500).

The offense is punished as a 3rd-degree felony (maximum, 5 years prison & \$5,000) if the false name given to law enforcement is actually the real name of another person.

The new law further provides that a court may award restitution if the offense has resulted in that other person being inconvenienced by the offender's use of their name.

Finally, the new law authorizes courts to issue such orders as are necessary to correct any public record which resulted from the offense.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. It permits the victim of the offender who gives the name of another upon arrest to quickly correct any errors in the public records through the same criminal court proceeding, instead of having to hire a lawyer and file the necessary motions in separate civil proceedings.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. It creates a new criminal offense for the giving of a false name or the name of another by an arrestee, or by a jail or prison inmate.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 901.02; creates new offense, s. 901.36, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 901.02 regarding court's powers to issue warrant for arrest.

Section 2: Creates s. 901.36 prohibiting the giving of a false name or the name of another.

Section 3: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not met to consider the bill, but offers a tentative estimate of **no fiscal impact**.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18 is inapplicable to the bill because it deals with a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

Section 1.

The bill gives courts clear authority to issue a warrant instead of allowing a summons to linger, unserved, indefinitely.

Section 2.

There appears to be no other statute which punishes the offense of giving the name of another, so conveniently as provided for by this new offense. Section **843.02, F.S., resisting arrest without violence** may also be used to penalize the giving of a false name to a law enforcement officer. However, resisting arrest without violence may not be punished as a felony, and it requires that a law enforcement officer actually be inconvenienced or not realize that the offender gave a false name. See, Z.P. v. State, 440 So. 2d 601 (3rd DCA 1983); Caines v. State, 500 So. 2d 728 (Fla. 2nd DCA 1987); Barkley v. State, 522 So. 2d 431 (Fla. 1st DCA 1988); and Rumph v. State, 544 So. 2d 1150 (Fla. 5th DCA 1989).

In any event, the new offense creates a provision which appears to save victims the time and expense of correcting public records through a separate civil process. Rather, the bill allows the criminal court to issue orders correcting the damage, without a new proceeding, and without the expense of hiring a lawyer.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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