

STORAGE NAME: h0011s1z.lecp

DATE: June 14, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
FINAL ANALYSIS**

BILL #: CS/HB 11 (Chapter 99-169, Laws of Florida)

RELATING TO: Arrests

SPONSOR(S): Committee on Law Enforcement and Crime Prevention and Representative Trovillion and Others

COMPANION BILL(S): CS/SB 738(i)

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

- (1) LAW ENFORCEMENT AND CRIME PREVENTION 9 YEAS 0 NAYS
- (2) CRIME AND PUNISHMENT 7 YEAS 0 NAYS
- (3) CRIMINAL JUSTICE APPROPRIATIONS (W/D)
- (4)
- (5)

I. FINAL ACTION STATUS:

On May 14, 1999, CS/HB 0011 was approved by the Governor, and became Chapter 99-169, Laws of Florida.

II. SUMMARY:

The bill amends s. 901.02 by providing that the court may issue a warrant for arrest for any misdemeanor offense, if a complaint has been filed charging the commission of a misdemeanor only, if a summons is returned unserved or there is evidence of avoidance of service, and if the magistrate reasonably believes from an examination of the complainant and other witnesses, that the person has committed an offense within the magistrate's jurisdiction.

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 the court 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.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Arrest Warrants

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

A warrant may be issued for the arrest of the person complained against if the magistrate, from the 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. The court must reasonably believe that the person complained against has committed an offense within the magistrate's jurisdiction. Typically, the warrant is based 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 try summarily, 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.

Effect on Not Answering a Summons

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.**

This statutory section appears to deal with the situation where the summons has actually been served, but the defendant chooses not to appear as commanded. In that case the court is authorized to issue a warrant. Also, the court is authorized to issue a warrant if the judge has reason to believe that the person summoned will not appear as commanded. It does not specifically address the situation where a summons remains unserved, perhaps through avoidance of service by the defendant.

Giving False Name Upon Arrest

There are currently several laws dealing with false personations and false representations. For example, a licensed private investigator who impersonates a law enforcement officer is subject to disciplinary action, including a fine and suspension or revocation of the investigator's license. s. 493.6118, F.S. A person who obtains property by false personation of another person commits a misdemeanor or third degree felony, depending upon the value of the property. s. 817.02, F.S. A person who obtains a credit card or other property by making false statements regarding the person's financial condition, assets, or liabilities commits a first degree misdemeanor. s. 817.03,

F.S. A person who falsely personates a law enforcement officer during the course of the commission of a felony resulting in the death or personal injury of another human being commits a first degree felony. s. 843.08, F.S. A person who, with intent to defraud, obtains the signature of any person to a mortgage, promissory note, or other instrument evidencing a debt by color or aid of fraudulent or false representation commits a third degree felony. s. 817.54, F.S. A person who deliberately impersonates a judge in connection with any legal process affecting persons and property commits a third degree felony. s. 843.0855, F.S.

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, or Providing a False Report To Law Enforcement Authorities. Both 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 for any misdemeanor offense, if the following conditions are met:

- (1) A complaint has to be filed charging the commission of a misdemeanor only;
- (2) The summons issued to the defendant has been returned unserved, or there is evidence of avoidance of service; and
- (3) The judge must reasonably believe, from an examination of the complainant and other witnesses, that the person complained against has committed an offense within the judge's jurisdiction.

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 fine).

The offense is punished as a 3rd-degree felony (maximum, 5 years prison & \$5,000 fine) 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.

There is 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 Steele v. State, 537 So.2d 711 (Fla. 5th DCA 1989), the Fifth District Court of Appeal held that it was improper to convict the appellant of resisting a law enforcement officer without violence, as there was no evidentiary support to show any criminal investigation of the appellant at the time he

gave a false name to the law enforcement officer, no request for assistance by the appellant or his companions, and no evidence that the appellant impeded the officer in his investigation in any way by the misinformation. *Steele* would be inapplicable to the new offense created by this section relating to providing a false name to a law enforcement officer, because it is only a criminal offense if a person who is *arrested or lawfully detained* provides a false name to a law enforcement officer. In *Steele*, the law enforcement officer had no probable cause or reasonable suspicion to support either an arrest or lawful detention of the appellant and his companions when the officer questioned them as to their identity.

Cases in which it has been claimed that a conviction for resisting a law enforcement officer violates the defendant's protected free speech would also not be applicable to the new offense relating to providing a false name to a law enforcement officer. In *D.G. v. State*, 661 So.2d 75 (Fla. 2d DCA 1995), the Second District Court of Appeal noted that "[i]t has been suggested that words alone can never 'obstruct' a law enforcement officer and that this statute proscribes only conduct that physically opposes an officer in performance of lawful duties." 661 So.2d at 76, *citing Wilkerson v. State*, 556 So.2d 453 (Fla. 1st DCA 1990), *review denied*, 564 So.2d 1088 (1990). "On the other hand, there are cases holding that the use of mere words can be a violation of section 843.02 when a suspect provides false information to a police officer during a valid arrest or *Terry stop*." *Id.*, *citing Rumph v. State*, 544 So.2d 728 (Fla. 5th DCA 1989) and *Caines v. State*, 500 So.2d 728 (Fla. 2d DCA 1987). The *D.G.* court concluded that from these cases, and other Florida cases, a general proposition can be made:

If a police officer is not engaged in executing process on a person, is not legally detaining that person, or has not asked the person for assistance with an ongoing emergency that presents a serious threat of imminent harm to person or property, the person's words alone can rarely, if ever, rise to the level of an obstruction. Thus obstructive conduct rather than offensive words are normally required to support a conviction under this statute. *Id.*

The newly created offense relating to providing a false name to a law enforcement officer does not appear to require obstructive conduct. Moreover, even if this new offense could be construed as substantially similar to s. 843.02, F.S., under the general proposition stated in *D.G.*, the new offense is an exception to the normal limitation of s. 843.02, F.S., to obstructive conduct because the criminal offense created by the bill relates to a person providing a false name to a law enforcement officer *after he has been arrested or lawfully detained*.

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.

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 ANALYSIS:

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.

IV. FISCAL ANALYSIS & 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 indicated that this bill would have no prison bed impact.

V. 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.

VI. COMMENTS:

None.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 6, 1999, the Committee on Law Enforcement and Crime Prevention adopted two amendments to HB 11. The first amendment removed references to the defendant's release on his or her own recognizance. These release procedures are adequately covered in other statutes and rules of procedure. The second amendment provided clarification that a warrant may issue where there is evidence of avoidance of service.

On February 3, 1999, the Committee on Crime and Punishment adopted two amendments to CS/HB 11. The first amendment provides that a warrant is issued at the time it is signed by the magistrate. In order to revoke a defendant's probation, the revocation process must be set in motion while the defendant is still on probation. The process is set in motion by the warrant being "issued". A recent Florida Supreme Court case held that a warrant is "issued" for purposes of probation revocation when the magistrate signs the warrant and the warrant is delivered to the proper executive officer for execution. *State v. Boyd*, 717 So.2d 524 (Fla. 1998). In *Boyd*, the warrant had been signed by the magistrate before Boyd's probationary period expired but the warrant was not delivered to sheriff for execution until after his probation had expired and the court reversed Boyd's eighteen year sentence. The first amendment changes this result in future cases by providing that the revocation process begins when a warrant is signed by a judge. Thus, a defendant's probation could be revoked if the judge signs the warrant before the term of probation expires even if it is not delivered to the sheriff to be executed until after the probationary period has ended. The second amendment removes the language of the amendment approved by the Committee on Law Enforcement and Crime Prevention which provided that a warrant may issue where there is evidence of avoidance of service.

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VIII. SIGNATURES:

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