

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 953 Warrants

SPONSOR(S): Criminal Justice Subcommittee; Nuñez and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 962

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Jones	Cunningham
2) Judiciary Committee	18 Y, 0 N	Jones	Havlicak

SUMMARY ANALYSIS

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and *no warrants* shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

To protect against official abuses and unfettered police discretion, most searches of private property require a warrant. And while police generally do not need a warrant to make an arrest in a public place, the process of obtaining an arrest warrant protects an individual from an unreasonable seizure. Both search and arrest warrants require an officer to demonstrate probable cause.

Section 933.07, F.S., sets forth the requirements for the issuance of a search warrant. It provides that a judge must review the warrant application and all proofs submitted to determine if probable cause exists. If probable cause is found, the judge must sign the search warrant with his or her name of office.

Section 901.02, F.S., provides that an arrest warrant may be issued when the judge reasonably believes the suspect has committed the offense. The statute also states that a warrant is issued at the time it is signed by the judge. Section 902.01, F.S., is silent on the requirement of probable cause for an arrest warrant.

The bill amends the requirements for the issuance of an arrest warrant in s. 901.02(1), F.S., to provide that a judge must review the complaint and all proofs submitted to determine if probable cause exists for any crime committed within the judge's jurisdiction. If probable cause is found, the judge must sign the arrest warrant with his or her name of office.

The bill amends ss. 933.07 and 901.02, F.S., authorizing judges to electronically sign a search or arrest warrant upon examination of an application or complaint and proof that it:

- Bears the affiant's signature or electronic signature;
- Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths; and
- If submitted electronically, is submitted by reliable electronic means.

The bill also provides that the warrant is deemed issued when a judge signs or electronically signs the warrant.

The bill does not appear to have a fiscal impact on state or local governments.

The bill is effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 1, Section 12 of the Florida Constitution makes the same guarantee. In *Steagald v. U.S.*,¹ the U.S. Supreme Court explained that the purpose of the Fourth Amendment warrant requirement “. . . is to allow a neutral judicial officer to assess whether the police have probable cause to make an arrest or conduct a search.” The probable cause standard is incapable of precise definition; however, generally, probable cause exists when a reasonable inquiry would cause a reasonable person to believe in the truth of a particular set of facts.²

Search Warrant

A search occurs when “an expectation of privacy that society is prepared to consider reasonable is infringed.”³ To protect against official abuses and unfettered police discretion, most searches of private property require a warrant.⁴ Before a judge can issue a warrant, the police must provide information that establishes probable cause to believe that the item of interest in the search is in a particular place.⁵ Despite the general rule that a search warrant is required, case law has set forth numerous exceptions to the search warrant requirement.⁶

Section 933.07, F.S., sets forth the requirements for the issuance of a search warrant. The statute provides that a judge must review the warrant application and all proofs submitted to determine if probable cause exists.⁷ If probable cause is found, the judge must sign the search warrant with his or her name of office.⁸ The search warrant may then be executed by any law enforcement officer or other person authorized by law to execute process.⁹

Arrest Warrants

An arrest is a seizure of a person, which occurs when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.¹⁰ To make a valid arrest, an officer must have probable cause. An officer has probable cause to make an arrest if, at that moment, the facts and circumstances within their knowledge and of which they have reasonably trustworthy information are sufficient to warrant a prudent man in believing that a person had committed or was committing an offense.¹¹

¹ 451 U.S. 204, 212 (1981).

² *Maryland v. Pringle*, 540 U.S. 366 (2003).

³ *United States v. Jacobsen*, 446 U.S. 109 (1984).

⁴ *See e.g., Minnesota v. Dickerson*, 508 U.S. 366 (1993) and *Arizona v. Hicks*, 480 U.S. 321 (1987).

⁵ *Steagald*, 451 U.S. at 213.

⁶ Generally the exceptions to the search warrant requirement are: search incident to arrest, automobile searches, plain view, consent, investigatory stops, exigent circumstances, inventory searches, national security, searches of probationers and parolees, case worker visits to welfare recipients, border searches, searches of school students, unreliable ear, administrative searches, and drug testing.

⁷ Section 933.07, F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ The test for determining whether a person has been seized within the meaning of the Fourth Amendment is whether, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave. *See United States v. Mendenhall*, 446 U.S. 544 (1980); *Terry v. Ohio*, 392 U.S. 1 (1968).

¹¹ *Beck v. Ohio* 379 U.S. 89 (1964).

An arrest warrant may be issued when there is probable cause to believe that a person committed an offense and its purpose is to protect an individual from an unreasonable seizure.¹² There are also exceptions to the arrest warrant requirement. For example, police generally do not need a warrant to make an arrest in a public place and can arrest a felony suspect when they have reasonable grounds to believe that a felony was committed and the arrestee is the suspect.¹³ Florida allows police to make a warrantless arrest for misdemeanor offenses if the offense was committed in the officer's presence.¹⁴

Section 901.02(1), F.S., provides that an arrest warrant may be issued when the judge, after examining the complaint and other witnesses, reasonably believes the suspect has committed the offense. The statute also states that a warrant is issued at the time it is signed by the judge. Section 902.01, F.S., is silent on the requirement of probable cause for an arrest warrant.

Section 901.02(2), F.S., authorizes a court to issue an arrest warrant when all of the following apply:

- A complaint has been filed charging the commission of a misdemeanor only;
- The summons issued to the defendant has been returned unserved; and
- The conditions of subsection (1) are met.

Section 901.02, F.S., is silent on the requirement of probable cause for an arrest warrant.

Effect of the Bill

The bill amends the requirements for the issuance of an arrest warrant in s. 901.02(1), F.S., to provide that a judge must review the complaint and all proofs submitted to determine if probable cause exists for any crime committed within the judge's jurisdiction. If probable cause is found, the judge must sign the arrest warrant with his or her name of office.

The bill amends ss. 933.07 and 901.02, F.S., authorizing judges to electronically sign a search or arrest warrant upon examination of an application or complaint and proof that it:

- Bears the affiant's signature or electronic signature;
- Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths; and
- If submitted electronically, is submitted by reliable electronic means.

The bill also provides that the warrant is deemed issued when a judge signs or electronically signs the warrant. The bill references s. 933.40, F.S., for the meaning of "electronic signature."¹⁵

B. SECTION DIRECTORY:

Section 1. Amends s. 901.02, F.S., relating to when warrant of arrest to be issued.

Section 2. Amends s. 933.07, F.S., relating to issuance of search warrants.

Section 3. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

¹² *Steagald*, 445 U.S. at 213.

¹³ *U.S. v. Watson*, 423 U.S. 411 (1976).

¹⁴ *T.L.M. v. State*, 371 So.2d. 688 (Fla. 1st DCA 1979).

¹⁵ Section 933.40, F.S., defines electronic signature as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment clarifies the requirements for an electronically signed warrant and amends the arrest warrant requirements in s. 901.02(1), F.S.

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