

**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: CS/SB 962

INTRODUCER: Judiciary Committee and Senator Gardiner

SUBJECT: Warrants

DATE: April 11, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.	Cellon	Cannon	CJ	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 962 provides that a judge may only issue an arrest warrant upon a finding of probable cause.

A judge may electronically sign an arrest or search warrant provided that an application:

- Is signed by an affiant, manually or electronically;
- Is supported by an oath or affirmation administered by the judge or other authorized person; and
- Is submitted through reliable electronic means if submitted electronically.

This bill considers a warrant to be electronically issued and signed by a judge when the judge electronically affixes his or her signature to the warrant.

This bill substantially amends sections 901.02 and 933.07, Florida Statutes.

## II. Present Situation:

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 I, Section 12 of the State Constitution provides, in part:

Searches and seizures.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures . . . shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court.

In *Steagald v. U.S.*, 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.”<sup>1</sup>

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.<sup>2</sup>

### Issuance of Arrest Warrants

There are 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.<sup>3</sup>

Florida law allows law enforcement to make a warrantless arrest of a person who:

- Commits a felony or misdemeanor or violates a municipal or county ordinance in the officer’s presence. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance must be made immediately or in fresh pursuit.
- Commits a felony if the officer has a reasonable belief that the person committed it.
- Violates ch. 316, F.S., the Florida Uniform Traffic Control Law, in the presence of the officer and the arrest is made immediately or in fresh pursuit.

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<sup>1</sup> 451 U.S. 204, 212 (1981).

<sup>2</sup> *Maryland v. Pringle*, 540 U.S. 366 (2003).

<sup>3</sup> *U.S. v. Watson*, 423 U.S. 411 (1976).

- Commits certain enumerated crimes if the officer has probable cause to make an arrest.
- In all other instances a court must issue an arrest warrant before a person may be arrested. A judge may issue an arrest warrant upon a reasonable belief that the person in the complaint has committed a criminal offense within the jurisdiction of the trial court.<sup>4</sup>

A warrant is considered issued at the time the judge signs the warrant.<sup>5</sup> Section 901.02, F.S. is silent on the requirement of probable cause for an arrest warrant.

### **Issuance of Search Warrants**

A search warrant is generally required when a person is considered to have a reasonable expectation of privacy in the property sought to be searched.<sup>6</sup> Likewise, courts will uphold warrantless searches, and admit evidence found in the search, if the defendant cannot establish a reasonable expectation of privacy. The court has found that a person has no reasonable expectation of privacy in a jail cell<sup>7</sup> or a police station.<sup>8</sup> In contrast, a person has the highest expectation of privacy in a person's private residence.<sup>9</sup>

A judge may issue a search warrant by signing the warrant upon a satisfactory showing of probable cause from the documents submitted. The search warrant is then issued to a law enforcement officer. The issuance of the search warrant acts as a command to a law enforcement officer to search the property described in the warrant and to bring the property specified and any person arrested in connection with the warrant before the court.<sup>10</sup>

### **Electronic Signatures for the Issuance of Warrants**

The Florida Legislature adopted an electronic filing process for the courts in 2009.<sup>11</sup> As justification, the Legislature identified as benefits of e-filing reduced judicial costs, increased timeliness in the processing of cases, and improved judicial case management.<sup>12</sup>

An electronic signature refers to “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.”<sup>13</sup>

Current law is silent as to whether a judge may sign arrest or search warrants with an electronic signature.

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<sup>4</sup> Section 901.02(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *J.W. v. State*, 95 So. 3d 372, 376 (Fla. 3d DCA 2012).

<sup>7</sup> *Bolin v. State*, 2013 WL 627146, \*7 (Fla. 2013).

<sup>8</sup> *Lundberg v. State*, 2012 WL 5870104, \*8 (Fla. 4th DCA 2012).

<sup>9</sup> *Rowell v. State* 83 So. 3d 990, 994 (Fla. 4th DCA 2012).

<sup>10</sup> Section 933.07(1), F.S.

<sup>11</sup> Chapter 2009-61, L.O.F.

<sup>12</sup> Section 28.2205, F.S.

<sup>13</sup> Section 933.40(1)(d), F.S.

**III. Effect of Proposed Changes:**

The bill amends s. 901.02, F.S., to require that a judge may issue an arrest warrant only upon a finding of probable cause.

This bill allows a judge to electronically issue an arrest or search warrant provided that an application:

- Is signed by the affiant, either manually or electronically;
- Is supported by an oath or affirmation administered by the judge or other authorized person; and
- Is submitted through reliable electronic means if the application is submitted electronically.

This bill deems a warrant to be electronically issued and signed by a judge when the judge electronically affixes his or her electronic signature to the warrant.

Florida law does not currently authorize electronic issuance of warrants.

This bill provides an alternative means to the current process of paper issuance of arrest and search warrants.

The bill takes effect July 1, 2013.

**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:**

The Office of State Courts Administrator expects a positive fiscal impact, if any, from the provisions of this bill. To the extent that the bill provides an alternative to judicial review and issuance of warrants by paper only, a more streamlined, efficient process may result.<sup>14</sup>

The Florida Sheriffs Association indicates that law enforcement agencies will experience a positive fiscal impact from this bill. For warrants to search property, a law enforcement officer will not need to remain at a potential crime scene while another officer physically travels to obtain a search warrant. For arrest warrants, this bill could reduce the time it currently takes for a law enforcement officer to arrest an offender.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Florida Sheriffs Association indicates that in 2012, various entities convened a workgroup on the feasibility of expanding the court's electronic filing process to include electronic signatures on warrants. Participants included the Florida Department of Law Enforcement, the National Center for State Courts, the Police Chief's Association, the Florida Court Technology Commission, circuit judges, sheriff's offices, state attorney's offices, and the clerks of court.<sup>16</sup>

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on April 8, 2013:**

This committee substitute:

- Requires that a judge may only issue an arrest warrant for probable cause.
- Authorizes a judge to issue an arrest or search warrant electronically if signed by a law enforcement officer electronically as well as manually.

**B. Amendments:**

None.

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

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<sup>14</sup> Office of the State Courts Administrator, 2013 Judicial Impact Statement, Senate Bill 962 (March 18, 2013) (on file with the Senate Committee on Judiciary).

<sup>15</sup> Florida Sheriffs Association, *Position Paper on Electronic Filing of Warrants* (on file with the Senate Committee on Judiciary).

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