

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 161 Indecent Exposure

SPONSOR(S): Hager; Harrell and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 254

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee	16 Y, 1 N	Cunningham	Havlicak

SUMMARY ANALYSIS

Section 800.03, F.S., makes it a first degree misdemeanor for a person to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

Section 901.15, F.S., sets forth the instances in which a law enforcement officer can arrest a person without a warrant. For misdemeanor offenses, the general rule is that law enforcement officers must witness the occurrence of the offense in order to make an arrest without a warrant. However, in certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to this rule.

The bill amends s. 800.03, F.S., to make second or subsequent violations a third degree felony. The bill also amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S.

The Criminal Justice Impact Conference met January 30, 2014, and determined the bill will have an insignificant impact on state prison beds. The bill may also result in an increase in the number of arrests for misdemeanor violations of s. 800.03, F.S., which would have a negative jail bed impact.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Exposure of Sexual Organs

Section 800.03, F.S., makes it a first degree misdemeanor¹ for a person to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

Arrest without a Warrant

Section 901.15, F.S., sets forth the instances in which a law enforcement officer (LEO) can arrest a person without a warrant. For misdemeanor offenses, the general rule is that LEOs must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.²

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes include:

- Violations of injunctions for protection in domestic violence and dating violence situations as well as violations of pretrial release conditions in domestic violence cases;
- Misdemeanor luring or enticing a child and child abuse;
- Assault upon a law enforcement officer, firefighter and other listed persons;
- Battery;
- Criminal mischief or graffiti-related offenses; and
- Violations of certain naval vessel protection zones or trespass in posted areas in airports.³

For the offenses listed above, an LEO does not have to witness the crime in order to make a warrantless arrest – they only need to have probable cause to believe the person committed the crime.⁴

Effect of the Bill

The bill amends s. 800.03, F.S., to make second or subsequent violations a third degree felony⁵ (rather than a first degree misdemeanor).

The bill also amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 800.03, F.S., relating to exposure of sexual organs.

Section 2. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 3. Provides an effective date of October 1, 2014.

¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

² Section 901.15, F.S.

³ *Id.*

⁴ *Id.*

⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

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 Criminal Justice Impact Conference met January 30, 2014, and determined the bill will have an insignificant impact on state prison beds.

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 permits an LEO to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S. This may result in an increase in the number of arrests for misdemeanor violations of s. 800.03, F.S., which would have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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