

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 1248

INTRODUCER: Criminal Justice Committee and Senator Steube

SUBJECT: Breach of the Peace

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon/Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1248 repeals s. 933.14(3), F.S.

Section 933.14(3), F.S., requires law enforcement to retain a pistol or firearm until a court orders its return when the pistol or firearm was taken either:

- Pursuant to a search warrant; or
- Without a search warrant upon a view by the officer of a breach of the peace.

The bill eliminates the statutory firearm retention requirement under both circumstances.

II. Present Situation:

Firearms and Other Property Seized Pursuant to Search Warrants

It is within the purview of the courts to issue search warrants, based upon probable cause, established to the judge's satisfaction in a sworn affidavit.¹ When a law enforcement officer executes a search warrant as part of the investigation of any crime, the officer may lawfully seize a pistol or a firearm if it is evidence contemplated within the four corners of the search warrant. Evidence seized pursuant to a search warrant must be returned to the judge for his or her inspection, along with a complete inventory of the items seized, within 10 days of the warrant's execution.²

¹ Sections 933.01, 933.02, 933.04, 933.06, and 933.07, F.S.; see also *Swartz v. State*, 316 So.2d 618 (Fla. 1st DCA 1975).

² Sections 933.05 and 933.12, F.S.

Whether seized pursuant to a search warrant or at the time of an arrest, evidence is generally retained by the investigating agency until the related criminal case is resolved by a trial, plea, dismissal by the court, or at the discretion of the prosecuting attorney. The evidence, which may include firearms, is retained in a secure manner by the agency until the related criminal case is over because of the possibility that the evidence will be presented at trial. Presentation at trial requires that the prosecutor can demonstrate the authenticity of the evidence and its connection to the case through a chain of custody of the evidence.

Return of Firearms and Other Property Seized Pursuant to a Search Warrant or Lawful Arrest

Section 790.08(1), F.S., requires that “[e]very officer making an arrest under s. 790.07, or under any other law or municipal ordinance within the state, shall take possession of any weapons, electric weapons or devices, or arms mentioned in s. 790.07 found upon the person arrested and deliver them to the sheriff of the county, or the chief of police of the municipality wherein the arrest is made, who shall retain the same until after the trial of the person arrested.”³

Upon the conclusion of the criminal case when evidence retention becomes unnecessary, a firearm is returned to the owner unless he or she is convicted of a felony in the case, or the property is contraband.⁴

In situations where the firearm (or any property) is admitted in evidence during the trial of the case, the court must release the evidence from the court’s jurisdiction. Pistols or other firearms seized pursuant to a search warrant or during an arrest for breach of the peace require a court order for release.⁵ In arrest cases, s. 790.08, F.S., provides that upon acquittal or dismissal of the charges, a person has 60 days to retrieve his or her firearm otherwise it is forfeited to the state six months after that.

Seizure of Firearms for “Safety Reasons” Not Permitted

Florida law does not currently provide for a law enforcement officer to seize a firearm from a person for “safety reasons” although some law enforcement agencies have created policies giving officers such discretion.

These situations have been reported to occur where a person was acting erratically or showing indications of being suicidal. The Bay County Sheriff requested the opinion of the Attorney General in a situation where a person was sent for an evaluation under the Baker Act but was not arrested or charged with a criminal offense.⁶ The opinion concluded that if a person is taken for

³ Section 790.07, F.S., prohibits displaying, using, threatening, or attempting to use a weapon or a firearm while committing or attempting to commit any felony offense.

⁴ Sections 933.14(1) and (2), and 790.08(2), F.S. See also *Eight Hundred, Inc. v. State*, 895 So.2d (Fla. 5th DCA 2005).

⁵ Section 933.14(3), F.S.; “It is not, of course, a prerequisite to a motion for return of property that a criminal prosecution be brought following the seizure of the property.” *Sawyer v. Gable*, 400 So.2d 992, 994, (Fla. 3rd DCA 1981).

⁶ Also known as “The Florida Mental Health Act,” it provides for emergency service and temporary detention for evaluation when required. s. 394.453(1)(b)1., F.S.

an evaluation under the Baker Act, but is not arrested or charged for a criminal offense of any kind, a law enforcement agency is *not* authorized to retain firearms taken from that person.⁷

Breach of the Peace or Disorderly Conduct

Section 877.03, F.S., provides that it is a second degree misdemeanor⁸ to:

- Commit “such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them”;
- Engage in brawling or fighting; or
- Engage in “such conduct as to constitute a breach of the peace or disorderly conduct.”

Because s. 877.03, F.S., does not define the terms “breach of peace” and “disorderly conduct,” it is unclear if the terms are effectively synonymous in their meaning. One court has described “breach of peace” as “a generic term including all violations of the public peace, order, or decorum. A breach of the peace includes the violation of any law enacted to preserve peace and good order.”⁹

III. Effect of Proposed Changes:

Section 933.14(3), F.S., requires law enforcement to retain a pistol or firearm until a court orders its return when the pistol or firearm was taken either:

- Pursuant to a search warrant; or
- Without a search warrant upon a view by the officer of a breach of the peace.

This bill repeals s. 933.14(3), F.S., in its entirety. The repeal impacts the process of retaining a pistol or firearm in *all* cases in which a search warrant is executed and a pistol or firearm is seized as evidence in a criminal investigation, not just those situations where an officer observes the commission of a misdemeanor breach of the peace.

It should be noted that arrests for breach of the peace may result in the seizure and retention of a pistol or firearm under the authority of s. 790.08, F.S.; therefore the only real effect of the bill could be in seizures pursuant to a search warrant.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁷ *Op. Att’y Gen. Fla.* 09-04, (2009). See also *Dougan v. Bradshaw*, 198 So.3d 878 (Fla. 4th DCA 2016).

⁸ A second degree misdemeanor is punishable by up to 60 days in jail, a fine of up to \$500, or both jail and a fine. Sections 775.082 and 775.083, F.S.

⁹ *Edwards v. State*, 462 So.2d 581, 583 (Fla. 4th DCA 1985) (citations omitted).

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 933.14 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 17, 2017:

The committee substitute:

- Changes the title to “[a]n act relating to search warrants” from “[a]n act relating to breach of the peace.”
- Deletes Sections 1 and 2 of the bill (relating to repealing provisions related to breach of the peace), leaving the repeal of s. 933.14(3), F.S., (Section 3 of the bill), and the effective date (Section 4).

B. Amendments:

None.

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