

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6013 Return of Property

SPONSOR(S): Byrd

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 3 N	Bruno	Sumner
2) Judiciary Committee	13 Y, 6 N	Bruno	Poche

SUMMARY ANALYSIS

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

- Pursuant to a search warrant, or
- Without a search warrant upon an officer viewing a breach of the peace.

Section 877.03, F.S., establishes the crime of breach of the peace, criminalizing acts 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; or engaging in brawling or fighting; or engaging in such conduct as to constitute a breach of the peace or disorderly conduct. A person who violates s. 877.03 commits a second degree misdemeanor, punishable by up to 60 days in the county jail and a \$500 fine.

Courts have broadly interpreted breach of the peace to include *all* violations of the public peace, order or decorum. While broad, the common law definition does not apply to displays of mental illness that do not result in a criminal investigation or charges, as when law enforcement involuntarily commits an individual under the Baker Act.

HB 6013 repeals s. 933.14(3), F.S., which requires a court order for the return of a firearm that was confiscated either pursuant to a warrant or without a warrant upon law enforcement viewing a breach of the peace. Law enforcement will be able to return a firearm that was seized under those circumstances without a court order but may still retain the firearm if otherwise authorized by law.

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

The bill provides an effective date upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

In Florida, a law enforcement agency is required to take possession of a firearm found on a person pursuant to an arrest and must retain the firearm until after disposition of the case.¹ If the person is later acquitted or the charges are dismissed, he or she is entitled to the return of the firearm.² If a person has been arrested for committing or attempting to commit a felony offense while carrying, displaying, using, threatening, or attempting to use a firearm³, the firearm is automatically forfeited to the state if that person is later convicted of the offense.⁴

Additionally, s. 933.14(3), F.S., requires law enforcement to retain firearms that are confiscated under specific circumstances. A firearm must be retained by law enforcement until there is a court order for its return when the firearm was taken either:

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

Section 877.03, F.S., criminalizes “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; or engages in brawling or fighting; or engages in such conduct as to constitute a breach of the peace or disorderly conduct.”⁵ A person who violates s. 877.03 commits a second degree misdemeanor.⁶ In interpreting s. 933.14(3), F.S., courts have used a broad common law definition of breach of the peace, which includes “all violations of the public peace, order or decorum.”⁷

Law enforcement agencies used s. 933.14(3), F.S., to retain the firearms of persons they encounter related to an involuntary commitment under Florida’s Baker Act.⁸ In response to this trend, the Florida Attorney General’s Office issued an advisory opinion in 2009 concluding that if law enforcement involuntarily commits a person under the Baker Act but does not arrest or charge that person for a criminal offense of any kind, the law enforcement agency is not authorized to retain a firearm taken from that person.⁹

In 2016, the Fourth District Court of Appeals addressed law enforcement’s authority to retain a firearm that was confiscated during a safety check.¹⁰ In that case, the plaintiff was neither arrested nor involuntarily committed pursuant to the Baker Act; however, law enforcement impounded his lawfully-owned firearm. When the plaintiff later requested the return of the firearm, the law enforcement agency declined to do so without a court order, citing to s. 933.14(3), F.S. Relying on the legislative intent of the Baker Act¹¹, as well as the prior Florida Attorney General opinion, the court found that persons do not commit a breach of the peace constituting a violation of the law simply for exhibiting behavior related to mental health issues.¹² Additionally, the court held that s. 933.14(3), F.S., did not require or

¹ “Every 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.” S. 790.08(1), F.S.

² S. 790.08(3), F.S.

³ S. 790.07(2), F.S.

⁴ S. 790.08(2), F.S.

⁵ S. 877.03, F.S.

⁶ A second degree misdemeanor is punishable by up to 60 days in the county jail and a \$500 fine. SS. 775.082, F.S., and 775.083, F.S.

⁷ *Dougan v. Bradshaw*, 198 So.3d 878, 883 (Fla. 4th DCA 2016) (quoting *B.A.A. v. State*, 333 So.2d 552, 554 (Fla. 3d DCA 1976)).

⁸ Also known as “The Florida Mental Health Act,” the Baker Act provides for emergency services and temporary detention of an individual for a mental health evaluation when required. S. 394.453(1)(b)(1), F.S.

⁹ 09-04 Fla. Op. Att’y Gen. (2009)

¹⁰ *Supra*, FN 7 at 886.

¹¹ The court relied on portions of the Baker Act directing that procedures, facilities, vehicles, and restraining devices used in connection with those accused of a crime shall not be used in connection with those who have a mental illness, except for the protection of the patient or others. S. 394.459(1), F.S.

¹² *Supra*, FN 7 at 882.

permit law enforcement agencies to retain firearms that were taken “in response to a safety call which did not result in a criminal investigation or charges.”¹³

A. EFFECT OF PROPOSED CHANGES:

HB 6013 repeals s. 933.14(3), F.S., requiring a court order prior to the return of a pistol or firearm that was impounded pursuant to a warrant or upon a view by the officer of a breach of the peace. Law enforcement will be able to return a firearm that was seized under those circumstances without a court order, but the agency may hold the firearm if otherwise authorized by law.

The bill provides an effective date upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 933.14, F.S., relating to return of property taken under search warrant.

Section 2: Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹³ Id.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not impact the holding in *Dougan v. Bradshaw*, 198 So.3d 878 (Fla. 4th DCA 2016), which will remain the law regarding safety checks that do not result in criminal charges or a criminal investigation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES