

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 874

INTRODUCER: Senator Pizzo

SUBJECT: Arrests

DATE: January 10, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 874 authorizes a law enforcement officer to execute a warrantless arrest on a minor who unlawfully possesses a firearm.

Section 901.15, F.S., provides a list of offenses that permit a law enforcement officer to make a warrantless arrest when there is probable cause to believe that a person has committed one of the listed offenses.

The bill adds s. 790.22(3), F.S., to the list of offenses that allow for a warrantless arrest. Section 790.22(3), F.S., makes it a first degree misdemeanor for a minor to possess a firearm, unless:

- The minor is engaged in a lawful hunting activity and is at least 16 years old or supervised by an adult;
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is at least 16 years old or supervised by an adult; or
- The firearm is unloaded and being transported by a minor directly to or from one of the above specified events; or
- The firearm is an unloaded firearm at his or her home.

The bill is effective October 1, 2022.

**II. Present Situation:**

News articles have reported a number of recent incidents in which children and teens have been killed with a firearm. Recently, in south Miami-Dade, teens were playing with a firearm when a

15-year-old fired a shot that killed two of his friends with one bullet.<sup>1</sup> In Jacksonville, during a short period of time in 2018, two 7-year-old children died in separate incidents when they were caught in the crossfire of open-air gun battles; a 16-year-old was charged with murder in the point-blank shooting of a 19-year-old after a high school football game; and a 17-year-old high school student was critically wounded in a drive-by shooting while he waited to catch a school bus.<sup>2</sup> In a Broward County classroom, someone pointed a handgun at unsuspecting students. The act was captured on video and posted on a 16-year-old boy's social media account with a caption asking whether to "carry my pistol with me like last year" just before the 2019-20 school year started. He was later arrested.<sup>3</sup> Finally, the escalating levels of arrests for weapons offenses among young offenders has led Leon County prosecutors to seek adult penalties for young repeat offenders.<sup>4</sup>

### **Arrest without an Arrest Warrant**

Section 901.15, F.S., provides a list of circumstances that a law enforcement officer may arrest a person without a warrant. Specifically, a warrantless arrest can occur when:

- The person has committed a felony or misdemeanor or violated a local ordinance in the officer's presence; however, the arrest for a misdemeanor or local ordinance must be made immediately or in fresh pursuit.
- A felony has been committed, and the officer reasonably believes the person committed it.
- The officer reasonably believes that a felony has been or is being committed, and that the person has committed or is committing it.
- A warrant for the arrest has been issued and is held by another officer for execution.<sup>5</sup>

Section 901.15, F.S., also specifies that a law enforcement officer may make a warrantless arrest, where the officer has probable cause to believe the person has committed one of the following offenses:

- A violation of an injunction for protection against domestic violence, dating violence, sexual violence, repeat violence, exploitation of a vulnerable adult or a foreign protection order.<sup>6</sup>
- An act of domestic violence or dating violence.<sup>7</sup>
- Child abuse or luring or enticing a child for unlawful purposes.<sup>8</sup>

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<sup>1</sup> NBC 6 South Florida, *2 Teens Killed by Single Bullet in South Miami-Dade*, November 26, 2019, available at <https://www.nbcmiami.com/news/local/2-teens-killed-by-single-bullet-in-south-miami-dade-police/2129088/> (last visited December 22, 2021).

<sup>2</sup> David Bauerlein, The Florida Times-Union, Jacksonville.com, *Lessons from a Journey, Duval County faced again with how to stem a rising tide of crime*, September 29, 2018; available at <https://www.jacksonville.com/news/20180929/duval-county-faced-again-with-how-to-stem-rising-tide-of-crime> (last visited December 22, 2021).

<sup>3</sup> Paul Scicchitano, Patch.com, *Florida Teen Arrested After Posting Video Of Gun In Classroom*, August 15, 2019, available at <https://patch.com/florida/miami/amp/28237379/florida-teen-arrested-after-posting-video-of-gun-in-classroom> (last visited December 22, 2021).

<sup>4</sup> Karl Eters, Tallahassee Democrat, Tallahassee.com, *Guns and teens lead to adult criminal charges*, March 30, 2019, available at <https://www.tallahassee.com/story/news/2019/03/30/guns-and-teens-lead-adult-criminal-charges/3239891002/> (last visited December 22, 2021).

<sup>5</sup> Section 901.15(1), (2), (3), and (4), F.S. Also, a law enforcement officer who witnesses a violation of ch. 316, F.S. (State Uniform Traffic Control), may relay that information to another officer who can then make the arrest when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer. Section 901.15(5), F.S.

<sup>6</sup> Section 901.15(6), F.S.

<sup>7</sup> Section 901.15(7), F.S.

<sup>8</sup> Section 901.15(8), F.S.

- Battery.<sup>9</sup>
- Criminal mischief or graffiti-related offenses.<sup>10</sup>
- Violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone.<sup>11</sup>
- A racing violation.<sup>12</sup>
- An act that violates a condition of pretrial release when the original arrest was for an act of domestic violence or dating violence.<sup>13</sup>
- Trespass in a posted secure area of an airport.<sup>14</sup>
- Assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employee or agent, or other specified officer who is engaged in the lawful performance of his or her duties.<sup>15</sup>
- Assault or battery upon an employee of a receiving facility who is engaged in the lawful performance of his or her duties.<sup>16</sup>
- Sexual cyberharrassment.<sup>17</sup>

### Constitutional Law

Under the Fourth Amendment to the United States Constitution, a person has the right to be free from an unreasonable search or seizure, including an unreasonable arrest.<sup>18</sup> To be “reasonable,” an arrest in a public place must be based on probable cause, though no arrest warrant is required.<sup>19</sup> To make an arrest in a home, an officer generally needs an arrest warrant. However, the courts have recognized a number of exceptions to this warrant requirement, such as “exigent circumstances” or when the officer has consent to enter the home.<sup>20</sup>

Section 901.15, F.S., is not an exception to the arrest warrant inside a person’s home and does not supersede the constitutional requirements for a lawful arrest.<sup>21</sup> Accordingly, courts have held

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<sup>9</sup> Section 901.15(9), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Section 901.15(13), F.S.

<sup>14</sup> Section 901.15(14), F.S.

<sup>15</sup> Section 901.15(15), F.S.

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

<sup>17</sup> Section 901.15(16), F.S.

<sup>18</sup> U.S. CONST. amend. IV.

<sup>19</sup> *State v. Ramos*, 378 So. 2d 1294 (Fla. 3d DCA 1979).

<sup>20</sup> *See e.g., U.S. v. Standridge*, 810 F.2d 1034 (11 Cir. 1987) (citing *Payton v. New York*, 445 U.S. 573 (1980)). The court set forth the factors that indicate exigent circumstances:

(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public.

*Id.* at 1037 (citing *Dorman v. United States*, 435 F.2d 385, 392–93 (D.C.Cir.1970) (en banc); *United States v. Campbell*, 581 F.2d 22, 25–27 (2d Cir.1978); *United States v. Newbern*, 731 F.2d 744, 748–49 (11th Cir.1984); *United States v. Roper*, 681 F.2d 1354, 1357 n. 1 (11th Cir.1982) (dictum), *cert. denied sub nom. Newton v. United States*, 459 U.S. 1207, 103 S.Ct. 1197, 75 L.Ed.2d 440 (1983)).

<sup>21</sup> *See e.g., Bratt v. Genovese*, 660 Fed Appx. 837 (11th Cir. 2016).

the statute unconstitutional *as applied* in situations in which s. 901.15, F.S., was proffered as a basis for a warrantless arrest in a home.<sup>22</sup>

### **Section 790.22, F.S.**

Section 790.22(3), F.S., prohibits a minor under the age of 18 from possessing a firearm, unless:

- The minor is engaged in a lawful hunting activity and is at least 16 years old or is under 16 years old and supervised by an adult;
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is at least 16 years old or under 16 years old and supervised by an adult who is acting with the consent of the minor's parent or guardian; or
- The firearm is unloaded and is being transported directly to or from an event described above; or
- The firearm is an unloaded firearm at his or her home.<sup>23</sup>

Section 790.22, F.S., as one court has stated, was “designed to get the immediate attention of all juveniles and to issue a ‘wake-up call’ that the state deems their firearm offenses to be serious enough to warrant the automatic deprivation of their liberty for a period of time, even on a first offense. Its intent clearly is to have a deterrent effect to hopefully prevent the juvenile’s escalation into the adult criminal justice system.”<sup>24</sup> As such, s. 790.22, F.S., contains a continuum of consequences for juveniles within the juvenile justice system, and their parents or guardians potentially in the criminal justice system, tailored to have a deterrent effect.

A minor who violates the prohibition against possession of a firearm commits a first degree misdemeanor.<sup>25</sup> For a first offense, the minor may serve up to 3 days in a Department of Juvenile Justice secure detention facility and will be required to perform 100 hours of community service.<sup>26</sup> Based upon his or her age and eligibility for a driving license or privilege, or the status of that license or privilege, the court may direct the Department of Highway Safety and Motor Vehicles to delay or withhold the license or privilege for up to 1 year.<sup>27</sup>

Any parent or guardian of a minor, or other adult responsible for the welfare of a minor, who knowingly and willfully permits the minor to possess a firearm under circumstances other than those listed above commits a felony of the third degree.<sup>28</sup>

Additionally, any natural parent or adoptive parent, whether custodial or noncustodial, or any legal guardian or legal custodian of a minor, if that minor possesses a firearm under

<sup>22</sup> See e.g., *State v. Perez*, 277 So. 2d 778 (Fla. 1973).

<sup>23</sup> Section 790.22(3), F.S.

<sup>24</sup> *T.M. v. State*, 689 So.2d 443, 446 (Fla. 3d DCA, 1997).

<sup>25</sup> Section 790.22(5)(a), F.S.

<sup>26</sup> *Id.* A secure detention facility is a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. Section 985.03, F.S. Community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

Section 790.22(5)(a), F.S.

<sup>27</sup> Section 790.22(5)(a), F.S.

<sup>28</sup> Section 790.22(4)(b), F.S. A felony of the third degree is punishable by up to 5 years’ imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

circumstances other than those listed above, may be required by the court to participate in parenting education classes approved by the Department of Juvenile Justice, upon the minor's first conviction. Upon any subsequent conviction of the minor, the court may require the parent to attend further parent education classes or perform community service hours together with the child.<sup>29</sup>

Any firearm that is possessed or used by a minor in violation of this section shall be promptly seized by a law enforcement officer and disposed of in accordance with s. 790.08, F.S.<sup>30</sup>

For a second or subsequent offense, the minor commits a third degree felony and is required to serve a period of detention of up to 15 days in a secure detention facility and to perform between 100 and 250 hours of community service.<sup>31</sup> Based upon his or her age and eligibility for a driving license or privilege, or the status of that license or privilege, the court may direct the Department of Highway Safety and Motor Vehicles to delay or withhold the license or privilege for up to 2 years.<sup>32</sup>

If a minor is found to have committed an offense that involves the use or possession of a firearm *including a violation of s. 790.22(3), F.S.*, or any offense during the commission of which the minor possessed a firearm, unless the state attorney authorizes the release of the minor, the minor shall be detained in secure detention and shall be given a hearing within 24 hours after being taken into custody.<sup>33</sup> At the hearing, the court may order that the minor continue to be held in secure detention.<sup>34</sup>

### III. Effect of Proposed Changes:

The bill authorizes a law enforcement officer who has probable cause to believe that a minor is currently or was in the past unlawfully in possession of a firearm, to arrest the minor without a warrant.

The bill is effective October 1, 2022.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

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

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<sup>29</sup> Section 790.22(4)(b), F.S.

<sup>30</sup> Section 790.22(6), F.S. Section 790.08, F.S., provides that a seized firearm must be kept until the case that the person was arrested for is resolved. Then, depending on the case's resolution, s. 790.08, F.S., specifies the manner in which the firearm should be returned or disposed of.

<sup>31</sup> Community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds. Section 790.22(5)(b), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 790.22(8), F.S.

<sup>34</sup> In order to keep the minor in secure detention, the juvenile court must make certain findings according to ss. 985.26 and 985.255, F.S., which may also include finding by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. Section 790.22(8), F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill appears likely to result in an indeterminate increase in costs associated with the criminal justice system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 901.15 of the Florida Statutes.

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

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

None.

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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