

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 738

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Arrest Warrants/Issuance

DATE: March 3, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 738 amends s. 901.02, F.S., by adding that a court may issue a warrant for a person's arrest when a misdemeanor summons has been returned unserved. Furthermore, the CS specifies that a warrant is deemed issued when it is signed by the court.

The CS creates s. 901.36, F.S., to provide that it is a first degree misdemeanor offense for a person arrested or lawfully detained to give a false name or otherwise falsely identify himself or herself to a law enforcement officer or county jail personnel. This offense is enhanced to a third degree felony in the event the giving of the false name or otherwise false identification results in adversely affecting another person.

The CS further provides that for a violation of s. 901.36, F.S., the court may order restitution and the correction of public records which contain the false name or false identification given, and that a person adversely affected by the unlawful use of his or her name or other identification may request from the court any orders necessary to correct any public record.

This CS substantially amends s. 901.02, F.S., and creates s. 901.36, F.S.

II. Present Situation:

Arrest Warrants

Section 901.02, F.S., currently provides that a trial court may issue an arrest warrant for a felony or misdemeanor offense if the court reasonably believes, after examining the complainant and other witnesses, that the person complained against committed the offense within the court's jurisdiction. Although the court may always issue a warrant for a felony, s. 901.09, F.S., limits the court's ability to issue a warrant for a misdemeanor. The section provides that a court must issue a summons, rather than a warrant:

- ◆ for an offense which would not result in jail time, and thus, may be tried without a jury, unless the court reasonably believes that the person complained against will not appear pursuant to the summons; and
- ◆ for a misdemeanor offense which could involve jail time and thus, must be tried with a jury, if the court reasonably believes the person complained against will appear pursuant to the summons.

Section 901.11, F.S., states that in the event a summons is issued and the person complained against fails to appear, the court must issue a warrant. Moreover, if the court, after issuing a summons, acquires reason to believe that the person complained against will not appear, the court may issue a warrant. Section 901.11, F.S.

A summons is served by the Sheriff. Sections 30.15 and 901.10, F.S. As indicated above, s. 901.11, F.S., provides that a court may issue a warrant if the person complained against fails to appear after a misdemeanor summons has been served; however, no statute addresses what the trial court may do in the event that a misdemeanor summons is returned unserved.

Furthermore, current case law provides that an arrest warrant for a violation of probation (VOP) must be “issued” while a defendant is on probation, and that an arrest warrant signed by a court is deemed “issued” when it is delivered to the Sheriff. *State v. Boyd*, 717 So.2d 524 (Fla. 1998)(noting that the term “issued” is not defined by statute). This holding has resulted in some defendants avoiding prosecution for a violation of probation charge due to the fact that the warrant, though signed by the court while the defendant was on probation, was not delivered to the Sheriff until after the defendant’s probation had expired. *See Boyd*, 717 So.2d at 525-526 (reversing defendant’s eighteen year prison sentence for a VOP where court signed the VOP arrest warrant while defendant was on probation, but warrant was not delivered to Sheriff until after probation expired).

Providing a False Name upon Arrest

Numerous Florida Statutes criminalize the conduct of falsely identifying one’s self or personating another in certain circumstances. For example, s. 281.08, F.S., provides that it is a first degree misdemeanor to falsely represent one’s self to be or to personate a Capitol Police agent or guard. Sections 843.08 and 843.0855, F.S., make it a felony to falsely act as or to personate a law enforcement officer, judge, or other enumerated state officer, and to act as such an officer or to require another to assist in a matter pertaining to a duty of any such officer. Section 817.02, F.S., makes it a first degree misdemeanor or a third degree felony, depending on the value of the property received, to obtain property by falsely personating another.

No Florida statute, however, specifically criminalizes the conduct of a person who provides a false name or otherwise falsely identifies himself or herself to a law enforcement officer or county jail personnel when he or she has been arrested or lawfully detained. Instead, case law holds that such conduct may be prosecuted pursuant to s. 843.02, F.S., the resisting, obstructing or opposing an officer without violence statute. This crime is penalized as a first degree misdemeanor and case law provides that a violation of s. 843.02, F.S., requires a showing that the defendant’s giving of the false identification when lawfully detained or arrested interfered with the officer’s performance

of his duties. *Rumph v. State*, 544 So.2d 1150 (Fla. 5th DCA 1989); *Caines v. State*, 500 So.2d 728 (Fla. 2d DCA 1987). Furthermore, no Florida statute specifically proscribes a person from adversely affecting another person by unlawfully giving the other person's name or identifying information to an officer.

III. Effect of Proposed Changes:

Arrest Warrants

Current statutes do not specify what a trial court may do in the event a misdemeanor summons has been returned unserved; i.e., the statutes are unclear as to whether a court may issue an arrest warrant when the Sheriff is unable to serve the summons. Section one of the CS amends s. 901.02, F.S., to clarify that the court may issue an arrest warrant after a misdemeanor summons has been issued and returned unserved. Specifically, the CS provides that the court may issue a warrant when:

- (1) a complaint has been filed charging the commission of a misdemeanor;
- (2) the summons issued to the defendant has been returned unserved; and
- (3) the court, after examining the complainant and other witnesses, reasonably believes that the defendant has committed an offense within the court's jurisdiction.

Furthermore, as explained *supra*, the courts have determined, in the absence of a statute defining the term "issued," that an arrest warrant is deemed "issued" only when it has been delivered to the Sheriff. The CS provides that, "A warrant is issued at the time it is signed by the magistrate," and thereby eliminates the potential for a defendant to avoid prosecution for a VOP simply because the warrant, though signed by the court while the defendant was on probation, is delivered to the Sheriff after probation expires.

Providing a False Name upon Arrest

The CS creates s. 901.36, F.S., to provide that it is a first degree misdemeanor offense for a person arrested or lawfully detained to give a false name or otherwise falsely identify himself or herself to a law enforcement officer or county jail personnel. This provision has the effect of eliminating current law's requirement that the State, in order to obtain a conviction for this conduct, must prove that the giving of the false name or identification interfered with the officer's performance of his duties. Moreover, the CS provides that this offense is enhanced to a third degree felony in the event the giving of the false name or otherwise false identification results in adversely affecting another person.

The CS further provides that for a violation of s. 901.36, F.S.:

- ◆ the court may order restitution;
- ◆ the court may order the correction of public records which contain the false name or false identification given; and

- ◆ a person adversely affected by the unlawful use of his or her name or other identification may request from the court any orders necessary to correct any public record.

In so providing, the CS enables victims of a s. 901.36, F.S., violation to correct their public records, e.g. criminal or driving records, without incurring the time and expense of initiating a separate civil process and of hiring an attorney.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Estimating Conference projects that this CS will have no prison bed impact, and likewise, the Public Defender's Office expects no fiscal impact. The State Courts System projects that the CS could result in increased court system costs if challenges to the statute created by the CS are presented in the court system; however, the State Courts System projects that, "[i]t is probable that any increased expenditures will not be significant."

VI. Technical Deficiencies:

None.

VII. Related Issues:

The CS does not rank the third degree offense of adversely affecting another person by unlawfully giving the other person's name or identification to an officer in s. 921.0022, F.S., the offense severity ranking chart. Thus, this offense will be scored as a level one on the sentencing guideline scoresheet, and unless the defendant charged has a substantial prior record, level one scoring will not result in a recommended prison sentence.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
