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## FLORIDA SEARCH WARRANTS AND ARREST WARRANTS



**This guide has been created as a general information tool. If you would like specific legal advice for your case contact our office at 407-953-5818 for a free consultation with Attorney Jonathan Torres.**

## Right to be Free from Unlawful Search and Seizure

Protection from unreasonable searches and seizures is guaranteed by the Fourth Amendment of the United States Constitution and Article I, §12, of the Florida Constitution.

The Fourth Amendment to the United States Constitution protects citizens of the United States, from unlawful searches and seizures. These protections apply in all 50 states including Florida. These constitutional protections require that all law enforcement show probable cause prior to violating a citizen's right to be free from unlawful searches and seizures. To determine if there is probable cause, a law enforcement must usually apply for either a **search warrant** or **arrest warrant**. The warrant will be brought before judge who will decided if it should be issued.

In order to have a warrant issued, the law enforcement officer must represent to a Judge that if a reasonable person reviewed the available evidence they would believe that a crime either had been committed, was in the process of being committed, or was at some point going to be committed as a result. Judges will then examine the evidence and circumstances to decide whether probable cause exists.

In this guide we will explain the requirements of a search warrant and an arrest warrant and what rights you may have when presented with such a warrant. Although these protections are provided for under the United States Constitution, this guide will focus on those protection as applied in the State of Florida.

### What is a Search Warrant?

A search warrant is an investigative tool obtained by law enforcement to obtain evidence to further develop a criminal case. Florida search warrants are covered under Florida Statute § 933.01-40. Upon review of a properly completed affidavit by

law enforcement, a judge may issue a search warrant within their jurisdiction if the representations made by the officer satisfy the probable cause standard. The warrant must satisfy probable cause and must clearly state the place to be searched and items to be seized.

With an issued warrant a law enforcement officer has a wide scope of authority. The law enforcement officer has the power force to enter your residence if you refuse to open the door. The officer can execute the search warrant any time of any day, even holidays.

### What can be done if you have been subject to an illegal search and seizure?

You be able to suppress the evidence found if it can be proven that the evidence was discovered unlawfully. A **Motion to Suppress Evidence** may be filed in your case pursuant to Rule 3.190(h), Fla. R. Crim. P. If the Motion is persuasive, a Court may enter an order suppressing the illegally seized evidence in any criminal proceeding. If you believe that evidence was procured by law enforcement unlawfully you should consult an experienced criminal attorney immediately.

### What is an Arrest Warrant?

Pursuant to Florida Statute § 901.02, an arrest warrant is issued by a Judge, upon examination of the complaint and proofs submitted by an appropriate official for probable cause. If the Judge is satisfied that probable cause exists for the issuance of an arrest warrant for a crime committed within the judge's jurisdiction, the Judge will sign and issue an arrest warrant.

There are 2 broad types of arrest warrants: Felony and Misdemeanor. A misdemeanor is a criminal offense punishable by less than one year in jail A felony is a crime punishable by a minimum of 1

year in prison, such as violent crimes and some drug offenses. Additionally, there are also several different types of warrants in Florida which are issued under various circumstances:

- The probable cause warrant - Issued pursuant to Florida Statute § 901.02.
- Bench warrant - Issued directly by the Judge. Usually these warrants are issued for failure to appear in court or pay a fine.
- Pick Up Order (PUO) - issued by a Judge in Juvenile Court.
- Out of State warrant/Out of County warrant - Generally, this is a warrant issued by a Judge outside of the present jurisdiction.
- Direct Capias - A writ prepared by the Clerk of Circuit Court.
- A Direct file arrest warrant - Issued by the State Attorney's Office with a finding of probable cause.
- Probation Violation.

To see if a warrant has been issued you can check the Florida Crime Information Center here:

<http://pas.fdle.state.fl.us/pas/restricted/PAS/home/home.jsf>

This linked database contains Florida warrant information as reported to the Florida Department of Law Enforcement by law enforcement agencies throughout the state and authorized for release to the public.

(<http://www.fdle.state.fl.us/>)

Please note that this information is not to be used as final confirmation that any warrant is active. Information contained herein should not be relied upon for any type of legal action. Also, please note that the FDLE does not represent that this information is current, active, or complete. You should verify that a warrant is active with your local law enforcement agency or with the reporting agency. If you discover an active warrant you should consult an experienced criminal attorney immediately.

### Arrest without a warrant

Florida Police officers are not always required to have an arrest warrant to make an arrest. Under Florida Statute 901.15, an officer may arrest a person without a warrant under many different circumstances, including the following:

(1) The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.

(2) A felony has been committed and he or she reasonably believes that the person committed it.

(3) He or she reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.

(4) A warrant for the arrest has been issued and is held by another peace officer for execution.

(5) A violation of chapter 316 has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit. Any law enforcement officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air that a driver of a vehicle has violated chapter 316, may arrest the driver for violation of those laws when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer.

(6) There is probable cause to believe that the person has committed a criminal act according to s. 790.233 or according to s. 741.31, s. 784.047, or s. 825.1036 which violates an injunction for protection entered pursuant to s. 741.30, s. 784.046, or s. 825.1035 or a foreign protection order accorded full faith and credit pursuant to s.

741.315, over the objection of the petitioner, if necessary.

(7) There is probable cause to believe that the person has committed an act of domestic violence, as defined in s. 741.28, or dating violence, as provided in s. 784.046. The decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence or dating violence on each other and to encourage training of law enforcement and prosecutors in these areas. A Law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection, under s. 741.31(4) or s. 784.047, or pursuant to a foreign order of protection accorded full faith and credit pursuant to s. 741.315, is immune from civil liability that otherwise might result by reason of his or her action.

(8) There is probable cause to believe that the person has committed child abuse, as defined in s. 827.03, or has violated s. 787.025, relating to luring or enticing a child for unlawful purposes. The decision to arrest does not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to protect abused children by strongly encouraging the arrest and prosecution of persons who commit child abuse. A Law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.

(9) There is probable cause to believe that the person has committed:

(a) Any battery upon another person, as defined in s. 784.03.

(b) An act of criminal mischief or a graffiti-related offense as described in s. 806.13.

(c) A violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in s. 327.461.

(d) A racing violation as described in s. 316.191(2).

(10) The officer has determined that he or she has probable cause to believe that a misdemeanor has been committed, based upon a signed affidavit provided to the officer by a Law enforcement officer of the United States Government, recognized as such by United States statute, or a United States military law enforcement officer, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, when the misdemeanor was committed in the presence of the United States Law enforcement officer or the United States military Law enforcement officer on federal military property over which the state has maintained exclusive jurisdiction for such a misdemeanor.

(11) (a) A Law enforcement officer of the Florida National Guard, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, has probable cause to believe a felony was committed on state military property or when a felony or misdemeanor was committed in his or her presence on such property.

(b) All law enforcement officers of the Florida National Guard shall promptly surrender all persons arrested and charged with a felony to the sheriff of the county within which the state military property is located, and all persons arrested and charged with misdemeanors shall be surrendered to the applicable authority as may be provided by law, but otherwise to the sheriff of the county in which the state military property is located.

The Florida National Guard shall promptly notify the applicable law enforcement agency of an arrest and the location of the prisoner.

(c) The Adjutant General, in consultation with the Criminal Justice Standards and Training Commission, shall prescribe minimum training standards for such law enforcement officers of the Florida National Guard.

(12) He or she is employed by the State of Florida as a Law enforcement officer as defined in s. 943.10(1) or part-time Law enforcement officer as defined in s. 943.10(6), and:

(a) He or she reasonably believes that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing the felony.

(b) While engaged in the exercise of his or her state law enforcement duties, the officer reasonably believes that a felony has been or is being committed; or

(c) A felony warrant for the arrest has been issued and is being held for execution by another peace officer.

Notwithstanding any other provision of law, the authority of an officer pursuant to this subsection is statewide. This subsection does not limit the arrest authority conferred on such officer by any other provision of law.

(13) There is probable cause to believe that the person has committed an act that violates a condition of pretrial release provided in s. 903.047 when the original arrest was for an act of domestic violence as defined in s. 741.28, or when the original arrest was for an act of dating violence as defined in s. 784.046.

(14) There is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry

into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. An arrest under this subsection may be made on or off airport premises. A Law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of the law enforcement officer's action.

(15) There is probable cause to believe that the person has committed assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, or other specified officers as set forth in s. 784.07 or has committed assault or battery upon any employee of a receiving facility as defined in s. 394.455 who is engaged in the lawful performance of his or her duties.

(16) There is probable cause to believe that the person has committed a criminal act of sexual cyberharassment as described in s. 784.049.

### **What is Extradition?**

Extradition refers to when an individual has committed a crime in Florida and will be arrested in another state and brought back to Florida where they will remain in custody until trial. The extradition laws of Florida, found in Florida Statute § 941.05-42, authorize the process of bringing a person arrested out of state on a fugitive warrant back to this state of Florida to answer the criminal charges.

Crimes across counties do not require extradition. All Florida counties will generally transport a person from one county in Florida to another on a warrant--whether a misdemeanor or felony. However, if a person is out of state the prosecutor will need to seek extradition.

Florida will usually only extradite on a felony warrant. Although under a few limited exceptions a prosecutor may find reason to extradite on a misdemeanor warrant. Regardless, if there is an outstanding arrest warrant it is better to deal with the warrant.

### **What do you do if you are an out of state resident with an outstanding Florida warrant?**

In some cases, especially if the warrant is particularly old or relates to a violation of probation, an attorney can contact the prosecutor to show them all of the reasons why the prosecutor should decide not to extradite by persuading the prosecutor that even if extradited it is unlikely to produce a conviction. If you can resolve the warrant and avoid a conviction on the underlying charges, then you might also be eligible to seal or expunge the criminal history record associated with the warrant.

### **No Statute of Limitations for Florida Warrants**

Prosecutors have time limits -- called the statute of limitations -- for filing criminal charges against a suspect. These time limits vary by the severity of the crime, and there are no limits for certain violent crimes such as capital murder or kidnapping. However, a warrant is not subject to these limitations. Once a warrant is issued it does not expire. On the other hand, if police arrested you after the statute of limitations expired, we may still be able to file a Motion to Dismiss the case. Therefore, if you have an outstanding warrant you should consult an experienced criminal attorney immediately.

### **ATTORNEY JONATHAN TORRES HAS BEEN REPRESENTING DEFENDANTS IN CRIMINAL MATTERS AND DUIs FOR OVER 10 YEARS.**



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