

## **Fresh pursuit and traffic offenses**

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**Subject:**  
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### **FRESH PURSUIT--NOT AFFECTED BY DECRIMINALIZATION OF TRAFFIC OFFENSES**

To: Philip S. Shailer, State Attorney, Fort Lauderdale

Prepared by: Carolyn M. Snurkowski, Assistant Attorney General

#### **QUESTION:**

Is the doctrine of hot or fresh pursuit applicable to Ch. 74-377, Laws of Florida, which provides for the decriminalization of certain traffic violations?

#### **SUMMARY:**

A traffic infraction as defined in s. 318.13(3), F. S., created by Ch. 74-377, Laws of Florida, is a "violation" for the purpose of permitting a peace officer to cite a traffic violator immediately or on fresh pursuit, as authorized by s. 901.15(5), F.S.

The answer to your question is in the affirmative.

Chapter 74-377, Laws of Florida, created Ch. 318, which provides for the decriminalization of certain traffic violations in Ch. 316, F. S., and excepts five specific violations enumerated in s. 318.17, F. S. The legislative purpose in decriminalizing violations of Ch. 316, F. S., is to facilitate "the implementation of a more uniform and expeditious system for the disposition of traffic infractions."

Section 901.15(5), F. S., authorizes a peace officer to arrest a person without a warrant when:

"(5) A violation of chapter 316 has been committed in the presence of the officer. Such arrest may be made immediately or on fresh pursuit."

The term "violation" as used in s. 901.15(5) includes both traffic violations and traffic infractions as defined in s. 318.13(3), F.S. Throughout Ch. 318, F. S., the Legislature interchangeably used the terms infractions and violations and, as a matter of fact, defined "infraction" in s. 318.13(3) as a "noncriminal violation."

Although certain traffic offenses have been decriminalized and renamed traffic infractions, such legislation does not adulterate a peace officer's power to arrest a traffic offender immediately or on fresh pursuit.

A violator under Ch. 318, F. S., receives a citation for a traffic infraction under s. 318.14, which is the same type of citation as issued for a criminal traffic violation. The issuance of the traffic citation is an "arrest" as contemplated in s. 901.15(5), F. S., which permits warrantless arrests for violations of Ch. 316, F. S., when committed in the presence of a peace officer. The violator, following the issuance of the citation, is permitted to either post bond or sign and accept this citation which indicates a promise to appear. Section 318.14.

The Florida Legislature in enacting Ch. 318, F. S., placed no restrictions on the ability of a peace officer to issue a citation for a noncriminal infraction. The need to apprehend noncriminal infraction violators is not eliminated simply because the violation has been redefined as an infraction and the penalty for such an infraction changed from criminal to civil. Practically speaking, the apprehension of traffic violators has not been affected but rather the criminal stigma of running a red light or making an illegal turn has been removed. Therefore, a peace officer who observes a violation of Ch. 316, F. S., which was decriminalized by Ch. 318 can arrest a violator immediately or, when an officer observes an infraction committed in his presence and the violator drives away from the site of the infraction, the officer may use fresh pursuit to apprehend the violator.