

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.)

Date: April 7, 1998 Revised: \_\_\_\_\_

Subject: Violations of Traffic Law

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Gomez</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill amends the fleeing or eluding statute as follows:

- ▶ *Third-degree felony offense - marked vehicle - speed not relevant.* Amends the current third-degree felony offense of fleeing or eluding a marked patrol vehicle by removing the requirement that the defendant’s actions cause the law enforcement officer to engage in a high speed vehicle pursuit.
- ▶ *Second-degree felony offense - marked vehicle - high speed or wanton disregard.* Creates a second-degree felony offense (15-year maximum prison sentence) similar to the amended third-degree felony offense which will require a showing of willfully fleeing or attempting to elude a marked patrol vehicle when the defendant “drives at high speed, or in any manner which demonstrates a wanton disregard for the safety of person or property.
- ▶ *Aggravated fleeing or eluding - enhanced penalties.* Aggravated fleeing or eluding occurs when a person leaves the scene of an accident having knowledge of an order to stop by a law enforcement officer and willfully fleeing in an attempt to elude such officer and as a result causes personal injury to another or damages another’s property. This offense is currently a third-degree felony (5-year maximum prison sentence). The bill enhances the penalty to a second-degree felony (15-year maximum prison sentence).
- ▶ *Misdemeanor offense.* Makes technical changes to the current misdemeanor offense of fleeing or eluding by deleting “directed” or “directive” and substituting in its place “order.”

The bill also provides for a \$2 court cost for each noncriminal traffic infraction when assessed by a municipality or county, which is used to fund local law enforcement agency training. Currently, the \$2 may only be assessed for criminal offenses.

This bill substantially amends the following sections of the Florida Statutes: 318.18, 316.1935, and 921.022.

## II. Present Situation:

### A. Fleeing or Eluding Offenses

Section 316.1935, F.S., contains 3 types of fleeing or attempting to elude a law enforcement officer offenses. The first type is a misdemeanor offense (1-year maximum jail sentence).

s. 316.1935(1), F.S. The misdemeanor offense makes it unlawful for:

- ▶ The *operator* of any vehicle,
- ▶ *Having knowledge* that he or she has been directed to stop such vehicle,
- ▶ By a *duly authorized* law enforcement officer,
- ▶ To *willfully refuse or fail to stop* the vehicle in compliance with such directive, or
- ▶ Having stopped, *willfully to flee* in an attempt to elude the officer.

s. 316.1935(1), F.S.

The second type of offense is a third-degree felony (5-year maximum prison sentence).

s. 316.1935(2), F.S. This third-degree felony offense makes it unlawful for:

- ▶ Any person who in the course of *unlawfully fleeing or attempting to elude* a law enforcement officer,
- ▶ In an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional *markings prominently displayed* on the vehicle *with siren and lights activated*,
- ▶ *Having knowledge* of an order to stop by a duly authorized law enforcement officer,
- ▶ Causes the law enforcement officer to engage in a *high-speed vehicle pursuit*.

s. 316.1935(2), F.S.

Consequently, the third-degree felony offense is distinguished from the misdemeanor by the additional elements of eluding a *marked patrol vehicle* with siren and lights activated *and* causing the law enforcement officer to engage in a *high-speed vehicle pursuit*.

The third type of offense is known as aggravated fleeing or eluding and it is also punished as a third-degree felony (5-year maximum prison sentence). s. 316.1935(3), F.S. Aggravated fleeing or eluding makes it unlawful for:

- ▶ Any person who leaves an *accident scene*,
- ▶ With *knowledge* of an order to stop by a duly authorized law enforcement officer,

- ▶ To *willfully refuse* or fail to stop or having stopped, *willfully fleeing* in an attempt to elude and,
  - ▶ As a result *causes injury* to another *or damages* another's property.
- s. 316.1935(3), F.S.

In addition to the criminal penalties, a court may revoke the driver's license, for up to 1 year, of a person convicted of any of the fleeing or eluding offenses. s. 316.1935(4), F.S.

The Criminal Punishment Code, effective October 1, 1998, authorizes the court to impose a sentence up to the statutory maximum for each offense. ss. 921.002 - 921.0026, F.S. However, the Punishment Code establishes a "floor" or minimum threshold sentence that is the minimum sentence that a court may impose, absent a departure reason authorized by statute. The Criminal Punishment Code worksheet is used to compute a defendant's total sentence points based on the primary offense, additional offenses, victim injury, and prior record. s. 921.0024, F.S. The offense severity ranking chart is used to rank felony offenses by levels which in turn are converted to points for computing primary offenses and additional offenses. s. 921.0022(3), F.S.

Fleeing or attempting to elude a law enforcement officer resulting in a high speed pursuit is currently classified as a level 4 offense under the offense severity ranking chart. Aggravated fleeing or eluding is classified as a level 5 offense. If a defendant with no prior record commits either a level 4 or a level 5 fleeing or eluding offense, his or her minimum threshold sentence would not require imprisonment under the Punishment Code. If, however, the defendant has a prior record or the defendant had additional offenses or caused victim injury, the threshold sentence may require imprisonment.

## **B. Court Costs**

The 1997 Legislature created ch. 938, F.S., to consolidate and categorize all the court costs imposed on offenders. In the past, these provisions were scattered throughout various chapters. ch. 97-271, L.O.F. Chapter 938, F.S., was designed to assist "the judiciary and other court participants to identify and locate applicable law relating to court costs and thereby facilitating the uniform imposition and collection of court costs." s. 1, ch. 97-271, L.O.F. Chapter 938, F.S., categorizes court costs in five parts as follows: (1) mandatory costs in all cases; (2) mandatory costs in specific types of cases; (3) mandatory court costs authorized by local governmental entities; (4) discretionary costs in specific types of cases; and (5) miscellaneous provisions.

The first category, mandatory costs in all cases, currently contains four provisions as follows:

- ▶ *Additional Court Costs Clearing Trust Fund.* This is a \$3 cost, the majority of which goes to the Criminal Justice Standards and Training Trust Fund. A small percentage of the \$3 is disbursed to the Department of Community Affairs, Bureau of Public Safety Management.

- ▶ *Crime Compensation Trust Fund.* This is a \$50 cost which is deposited in the Crimes Compensation Trust Fund administered by the Department of Legal Affairs.
- ▶ *Surcharge on Costs.* This is an additional 5 percent surcharge on court costs which is to be deposited in the Crimes Compensation Trust Fund.
- ▶ *Local Government Criminal Justice Trust Fund.* This is a \$200 cost for felonies and a \$50 cost for misdemeanors and criminal traffic offenses, deposited in a special trust fund for counties in order to defray some of their Article V costs.

*Court costs for local law enforcement training.* Section 938.15 F.S., provides for a \$2 court cost when assessed by a municipality or county, in addition to the \$3 court cost described in the first bullet above. (The majority of the \$3 court cost goes to the Florida Department of Law Enforcement's Criminal Justice Standards and Training Trust Fund.) The supplemental \$2 court cost goes to fund a local law enforcement agency's criminal justice education degree programs and training courses, including basic training. s. 938.15, F.S., *formerly* s. 943.25(13), F.S.

The 1997 Legislature amended s. 318.18, F.S., and the \$3 court cost provision to require the assessment of the court cost for noncriminal traffic infractions. ss. 12 and 13, ch. 97-255, L.O.F. However, the 1997 Legislature did not amend the \$2 local law enforcement court cost provision to allow for assessment for noncriminal traffic infractions.

### **III. Effect of Proposed Changes:**

#### **A. Fleeing or Eluding Offenses**

The bill amends the fleeing or eluding statute as follows:

- ▶ *Third-degree felony offense - marked vehicle - speed not relevant.* Amends the current third-degree felony offense of fleeing or eluding a marked patrol vehicle by removing the requirement that the defendant's actions cause the law enforcement officer to engage in a high speed vehicle pursuit. It also amends this offense by requiring that the person "willfully flees or attempts to elude." The law enforcement officer must be in a "patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated." The bill places this offense in level 3 of the Criminal Punishment Code's Offense Severity Ranking Chart.
- ▶ *Second-degree felony offense - marked vehicle - high speed or wanton disregard.* Creates a second-degree felony offense (15-year maximum prison sentence) similar to the amended third-degree felony offense which will require a showing of willfully fleeing or attempting to elude a marked patrol vehicle when the defendant "drives at high speed, or in any manner which demonstrates a wanton disregard for the safety of person or property. Like the third degree offense, the law enforcement officer must be in a "patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights

activated.” The bill removes the requirement from the current third-degree felony offense that the defendant’s fleeing or eluding causes the officer to engage in a high-speed pursuit. The bill places this offense in level 4 of the Criminal Punishment Code’s Offense Severity Ranking Chart.

- ▶ *Aggravated fleeing or eluding - enhanced penalties.* Aggravated fleeing or eluding occurs when a person leaves the scene of an accident having knowledge of an order to stop by a law enforcement officer and willfully flees in an attempt to elude such officer and as a result causes personal injury to another or damages another’s property. This offense is currently a third-degree felony (5-year maximum prison sentence). The bill enhances the penalties to a second-degree felony (15-year maximum prison sentence). The bill maintains this offense in Level 5 of the Criminal Punishment Code’s Offense Severity Ranking Chart.
- ▶ *Misdemeanor offense.* Makes technical changes to the current misdemeanor offense of fleeing or eluding by deleting “directed” or “directive” and substituting in its place “order.” This will conform to terminology used in the aggravated fleeing or eluding offenses. The misdemeanor offense prohibits a driver who has knowledge that a duly authorized law enforcement officer has ordered him or her to stop from willfully fleeing in an attempt to elude. The second and third degree felony offenses described above apply to marked patrol vehicles only. Consequently, fleeing or eluding an unmarked patrol vehicle is always a misdemeanor, unless a defendant commits the offense by fleeing the scene of an accident after receiving an order to stop by a law enforcement officer and subsequently causes injuries or property damage (aggravated fleeing or eluding).

#### **B. Court Costs**

The bill amends s. 318.18, F.S., to correct an erroneous cross-reference and to impose a \$2 court cost for each noncriminal traffic infraction when assessed by a municipality or county, as is provided by s. 938.15, F.S. (Section 938.15, F.S., provides an additional \$2 court cost to be assessed against each person convicted for violation of a state penal or criminal statute or convicted for violation of a municipal or county ordinance. The costs are to be used for local law enforcement agency training.)

#### **IV. Constitutional Issues:**

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

None.

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

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 316.1935(2), F.S., currently prohibits fleeing or eluding a law enforcement officer in a marked vehicle and thereby causing the law enforcement officer to “engage in a *high-speed* pursuit.” This bill changes the wording of this offense by prohibiting fleeing or eluding by a defendant who does so by driving “at *high speed*, or in any manner which demonstrates a wanton disregard for the safety of persons or property.” Consequently, although the bill no longer requires that the defendant’s actions cause a law enforcement officer to engage in a high-speed pursuit, high speed remains an element of the defendant’s driving. Neither the bill, nor current law provide a definition for “high speed.”

However, use of the phrase “high-speed,” in s. 316.1935(2), F.S., has been upheld on challenges that it was unconstitutionally vague. *Fox v. State*, 700 So. 2d 172, (4th DCA 1997); *State v. Barnes*, 686 So. 2d 633 (Fla. 2d DCA 1996). In these decisions affirming the defendant’s convictions, the courts found that the statute, as applied to the defendant’s conduct, was not vague. *Fox, supra.*, (in response to a motorcycle officer’s pursuit with lights, siren and flashing headlights activated, Fox and his companion attained speeds of 95 to 100 miles per hour and separated their motorcycles, traveling in different lanes) *Barnes, supra.*, (statute not unconstitutionally vague as applied to defendant who in attempting to flee from officer caused officer to attain speed of 80 miles per hour in a 45 mile per hour speed zone).

Thus, the courts have interpreted the phrase “high speed” in the context of the particular facts presented to hold that it is not vague. Since the courts’ interpretation was based on the facts described above, it is possible that a future court might find the use of this term vague as applied to different facts. In *Fox, supra.*, the court agreed with the trial court’s statement that there was “some legitimate concern for the potential, however, slight, for the arbitrary enforcement of the law.” The court went on to recommend that the legislature “enact laws setting forth statewide uniform standards and guidelines for the initiation of high speed chases which would be construed in *pari materia* with the Aggravated Fleeing Statute.” *Fox, supra.*

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

This bill authorizes imposition of a \$2 court cost for each noncriminal traffic infraction when assessed by a municipality or county, as is provided by s. 938.15, F.S.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill amends the third-degree felony offense of fleeing or eluding by removing the current requirement that the defendant's actions cause the law enforcement officer to engage in a high speed vehicle pursuit. This bill creates a second-degree felony offense similar to this amended third-degree felony offense which will require a showing of high speed or wanton disregard for safety of person or property. Also, this bill enhances the penalty for aggravated fleeing or eluding to a second degree felony. These amendments and enhanced penalties might result in an impact on the Department of Corrections as well as the judiciary, state attorneys, and public defenders.

The Criminal Justice Estimating Conference will determine the prison bed impact of this bill later this month.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.