

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: March 10, 1998 Revised: _____

Subject: Vehicular and Vessel Homicide Penalties

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

I. Summary:

Senate Bill 948 amends s. 775.081, F.S. (vehicular homicide) and s. 775.082, F.S. (vessel homicide) to increase the felony degree of vehicular and vessel homicide from third-degree felonies to second-degree felonies. Senate Bill 948 also increases the felony degree of the enhanced vehicular and vessel homicide offenses from second-degree felonies to first-degree felonies.

This bill substantially amends the following sections of the Florida Statutes: 782.071, 782.072, and 921.0022.

II. Present Situation:

The vehicular homicide statute was enacted by the Legislature to “cover the hiatus between . . . manslaughter and the traffic offense of reckless driving.” *McCreary v. State*, 371 So.2d 1024 (Fla. 1979). “The vehicular homicide statute and the vessel homicide statute are almost identically worded.” *Marquez v. State*, 536 So.2d 152, 154 (Fla. 3rd DCA 1990).

Vehicular homicide, which is a third-degree felony, is “[t]he killing of a human being by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.” s. 782.071(1), F.S. “[T]his reckless operation of a motor vehicle must be the proximate cause of the death of a human being.” *Velazquez v. State*, 561 So.2d 347, 349 (Fla. 3rd DCA 1990). Vessel homicide requires the same elements as vehicular homicide, but involves reckless operation of a vessel. s. 782.072(1), F.S. *See Marquez, supra*.

“When the degree of negligence falls short of culpable negligence but is more than the mere failure to use ordinary care, the offense becomes vehicular homicide.” *Savoia v. State*, 389 So.2d

294 (Fla. 3rd DCA 1980). “Reckless driving is one step down from vehicular homicide. First is manslaughter, then vehicular homicide and next, reckless driving.” *Barritt v. State*, 517 So.2d 65, 67 (Fla. 1st DCA 1987). “What this means is that vehicular homicide requires a lesser standard of proof than manslaughter by culpable negligence, but cannot be proven without also proving the elements of reckless driving.” *Chikitus v. Shands*, 373 So.2d 904, 905 (Fla. 1979). It is not necessary that the defendant have foreseen the specific circumstances causing the death of the victim, but only that the defendant should have reasonably foreseen “that the same type of general harm might occur if he knowingly drove his vehicle under circumstances that would likely cause death or great bodily harm to another.” *Lewek v. State*, 1997 WL 656288 (Fla. 4th DCA 1997).

Vehicular homicide and vessel homicide are second-degree felonies if a person: 1) commits vehicular or vessel homicide; 2) at the time of the accident, the person knew, or should have known, that an accident occurred; and 3) the person failed to give information and render aid as required by s. 316.062, F.S. (or s. 316.062, F.S., if there is a vessel homicide). ss. 782.071(2) and 782.072(2), F.S. Prior to the amendment of the vehicular homicide statute in 1996 (ch. 96-330), second-degree felony vehicular homicide required a vehicular homicide connected with a willful failure to stop or comply with the requirements of leaving the scene of an accident s. 316.027, F.S. (leaving the scene of an accident).

In *Mancuso v. State*, 652 So.2d 370, 372 (Fla. 1995), the Florida Supreme Court held that s. 316.027, F.S., which at that time proscribed leaving the scene of an accident resulting in an injury or death, required proof that the driver charged with leaving the scene “either knew of the resulting injury or reasonably should have known from the nature of the accident.” In 1993, the Legislature divided the offense in s. 316.027, F.S., into two felonies: one dealing with injury; one dealing with death. In light of the *Mancuso* opinion, it was clear that a person leaving the scene of an accident resulting in an injury had to know that an injury occurred; less clear was whether *Mancuso* required knowledge of death if a death occurred. This question would not be definitively answered by the Florida Supreme Court until 1997 when the Court held in *State v. Dumas*, 700 So.2d 1233 (Fla. 1977) that *Mancuso* required knowledge of injury only and not death.

As a result of the *Mancuso* opinion and the open question as to whether knowledge of death was required (until *Dumas*), there were few prosecutions for second-degree felony vehicular homicide. The Legislature attempted to rectify this situation in 1996 by changing the elements of second-degree felony vehicular homicide with similar conforming changes to second-degree felony vessel homicide. The Legislature eliminated the linkage between vehicular homicide and leaving the scene of an accident to create the current second-degree felony vehicular homicide offense. Instead, the Legislature linked vehicular homicide to failure to give information and render aid under s. 316.062, F.S. Further, the Legislature specifically directed that this offense does not require that the person know that the accident resulted in an injury or death; the person need only know, or the person should have known, that an accident occurred. Similar changes were made to second-degree felony vessel homicide. The felony degree and sentencing rankings of vehicular/vessel homicide, or second-degree felony vehicular/vessel homicide, did not increase.

Until October 1, 1998, the Florida sentencing guidelines are the structure for criminal sentencing in Florida. The Florida Punishment Code will be the structure for criminal sentencing for offenses committed on or after October 1, 1998, the date the Code takes effect; offenses committed prior to October 1, 1998 will be sentenced under the sentencing guidelines.

Under the sentencing guidelines, the recommended guidelines sentence provided by the total points scored for vehicular homicide, second-degree felony vehicular homicide, or their vessel homicide counterparts, exceeds the maximum punishment provided by s. 775.082, F.S., for the felony degree of these offenses.

As previously stated, vehicular homicide and vessel homicide are third-degree felonies. Although these offenses result in a death, they have the same felony degree as numerous offenses which not only do not result in death but do not result in physical injury. For example, petit theft (third conviction), dealing in credit cards, possessing fraudulent titles, perjury, bookmaking, owning a chop shop, grand theft (1st, 2nd and 3rd degree), are all third-degree felonies. The Legislature has distinguished vehicular and vessel homicide as more serious than many third-degree felony offenses by ranking vehicular/vessel homicide higher in the Criminal Punishment Code offense severity ranking chart than many other third-degree felonies; however, since the statutory maximum punishment for a third-degree felony under s. 775.082, F.S., is the maximum punishment that can be imposed under the Code, the sentencing court cannot impose a maximum punishment for vehicular/vessel homicide greater than the maximum punishment for any other third-degree felony.

Under the Florida Punishment Code, a lowest permissible sentence is scored for an offense. The calculation of total sentence points for the purpose of determining a lowest permissible sentence differs somewhat from the calculation of such points for the purpose of determining a recommended guidelines sentence, but even under the Code sentencing calculation, the lowest permissible sentence for vehicular homicide, second-degree felony vehicular homicide, or their vessel homicide counterparts exceeds the maximum punishment provided by s. 775.082, F.S., for the felony degree of these offenses.

A special problem exists regarding this anomaly in its relation to sentencing under the Code which does not exist in its relation to sentencing under the sentencing guidelines. When a recommended guideline sentence exceeds the maximum sentence otherwise authorized under s. 775.082, F.S., the recommended guidelines sentence must be imposed absent a departure. s. 921.0013(2), F.S. However, under the Criminal Punishment Code, the sentence imposed cannot exceed the maximum punishment provided by s. 775.082, F.S., for the felony degree of these offenses.

III. Effect of Proposed Changes:

Senate Bill 948 amends s. 775.081, F.S. (vehicular homicide) and s. 775.082, F.S. (vessel homicide) to increase the felony degree of vehicular and vessel homicide from third-degree felonies to second-degree felonies. Senate Bill 948 also increases the felony degree of the

enhanced vehicular and vessel homicide offenses from second-degree felonies to first-degree felonies.

The increase by one felony degree of the vehicular and vessel homicide offenses places these offenses in a more exclusive group of second-degree felony offenses, a group which is more likely to include offenses causing serious bodily injury or death than the group of third-degree felony offenses.

This bill also cures, at least for first time vehicular/vessel homicide offenders, the problem where the lowest permissible sentence for vehicular/vessel homicide exceeds the statutory maximum penalty for the felony degree of these offenses. The bill makes these offenses second-degree felonies; the maximum punishment for a second-degree felony is 15 years imprisonment. s. 775.082. In the case of a single victim and a first-time offender, the vehicular/vessel homicide would not score above the statutory cap for a second-degree felony.

Section 921.0022, F.S., which is the Criminal Punishment Code offense severity ranking chart, is amended to modify the descriptions of the vehicular and vessel homicide offenses in the ranking chart to reflect the change in the felony degree of these offenses; the bill does not change the level rankings.

This act takes effect on October 1, 1998.

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:

On March 13, 1998, the Criminal Justice Estimating Conference (CJEC) met to consider the fiscal impact of Senate Bill 948. The following is an excerpt from the analysis prepared by the Economic and Demographic Research Division:

According to the sentencing guidelines database, there were 27 persons sentenced in 1997 for the level 7 vehicular and vessel homicide offenses (26 for vehicular and 1 for vessel homicide). With no additional points or prior offenses, these offenses would call for a 148 month prison sentence. (56 points for a level 7 offense plus 120 victim injury points minus 28). Of the 27 persons sentenced in 1997, 12 persons received a prison sentence as their most serious sanction (mean length = 113 months), 12 received probation as their most serious sanction, and 3 received community control. This implies a sanction mitigation rate of 56 percent.

Under the Florida Criminal Punishment Code, the permissible range for sentencing would increase to the statutory maximum for the primary offenses. In this case, the maximum would increase from 5 years to 15 years with the proposed felony degree change. Although this is 5.6 years greater than the average prison sentence now given to those receiving a prison sanction, the small number of persons receiving prison sentences for these two offenses suggest that the felony degree change would have minimal or no impact on the prison system.

Only two persons were sentenced in 1997 for the level 8 vehicular homicide (and none for vessel homicide). One of these persons was sentenced to prison for 56 months and one received a 15 year probation term. It is assumed that the proposed change in felony degree would have no impact on the prison system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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