

STORAGE NAME: h0323.cp
DATE: March 5, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 323
RELATING TO: Driving Under the Influence
SPONSOR(S): Representative Jacobs
COMPANION BILL(S): CS/S 94 (S)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2) CORRECTIONS
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 323 makes the following amendments to section 316.193, the D.U.I. statute:

- The bill increases a fourth or subsequent offense of driving under the influence from a third degree felony to a second degree felony.
- The bill increases from a first degree misdemeanor to a third degree felony, the offense of driving under the influence and causing damage to the property or person of another.
- The bill increases from a third degree felony to a second degree felony, the offense of causing serious bodily injury to another while driving under the influence.
- The bill increases from a second degree felony to a first degree felony the offense of D.U.I. manslaughter. The bill also eliminates language which treated D.U.I. manslaughter where the defendant failed to report the accident or render aid separately from D.U.I. manslaughter.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

D.U.I. In Florida

A D.U.I. conviction requires proof of the following elements:

- ▶ The person was driving or in actual physical control of a vehicle, **AND**
- ▶ The person's Blood Alcohol Level (BAL) is greater than .08%, **OR**
- ▶ The person is under the influence of **alcohol** or a **controlled substance** to the extent that their normal faculties are impaired.

Related D.U.I. Charges Florida's D.U.I. penalties are designed to address five related types of criminal conduct. The penalties vary for each as follows:

- 1) **Simple D.U.I.** -- For a first offense with no property damage or injury involved, the maximum penalty is a \$500 fine and 6-months in jail.
- 2) **D.U.I. With Property Damage** -- In the event that the operation of the vehicle while intoxicated causes damages to the property or person of another, the offense is a first degree misdemeanor with a maximum penalty of 9-months in jail and a \$1,000 fine.
- 3) **D.U.I. With Serious Bodily Injury** -- In the event of an accident resulting in serious bodily injury to another, the offense is reclassified as a 3rd-degree felony (maximum \$5,000 fine & 5-years in prison).
- 4) **D.U.I. Manslaughter** -- In the event of an accident caused by the offender which results in a death, the offense is reclassified as a 2nd-degree felony (maximum \$10,000 fine & 15-years in prison).
- 5) **D.U.I. Manslaughter With Failure to Render Aid** -- In the event of an accident caused by the offender which results in a death and at the time of the accident, the offender knew or should have known that the accident occurred and failed to give information or render aid, the offense is reclassified as a 1st-degree felony (maximum \$10,000 fine & 30 years in prison).

Reclassification for Simple D.U.I.

Even simple D.U.I., which results in no property damage or injury to others is reclassified depending on the number of times an offender has already been convicted. The penalties for Driving Under the Influence in Florida, for successive convictions, including the enhanced penalties for driving with a blood alcohol level over .20, as found in Section 316.193, F.S., are as follows:

	Incarceration (maximum)	Incarceration Over .20 BAL*	Fine	Fine Over .20 BAL*
1st Offense	6 months jail	9 months jail	\$250 - \$500	\$500 - \$1,000
2nd Offense	9 months jail	12 months jail	\$500 - \$1,000	\$1,000 - \$2,000
3rd Offense	12 months jail	12 months jail	\$1,000 - \$2,500	\$2,000 - \$5,000
4th Offense (third degree felony)	5 years prison	5 years prison	\$1,000 - \$5,000	\$1,000 - \$5,000

* BAL -- Blood Alcohol Content

Mandatory Minimums For Repeat D.U.I. Offenders

A first D.U.I. offense will usually be punished by probation. However, repeat D.U.I. offenses carry mandatory jail sentences, as follows:

- ▶ 2nd D.U.I. (within 5-years) -- **mandatory 10-days in jail**
- ▶ 3rd D.U.I. (within 10-year) -- **mandatory 30-days in jail**

B. EFFECT OF PROPOSED CHANGES:

Fourth or Subsequent D.U.I.

The bill amends section 316.193 to increase the degree of crime for a defendant convicted of a fourth or subsequent D.U.I. from a third degree felony to a second degree felony. A second degree felony is punishable by up to fifteen years in prison. Thus, the bill would maintain a third D.U.I. as punishable by up to one year in jail and make a fourth D.U.I. punishable up to 15 years in jail.

D.U.I. Causing Damage to Property

The bill also increases a D.U.I. which causes damage to the property or person of another from a first degree misdemeanor to a third degree felony, punishable by up to five years in prison.

D.U.I. Causing Serious Bodily Injury

The bill increases a D.U.I. which causes serious bodily injury to another from a third degree felony to a second degree felony, punishable by up to fifteen years in prison.

D.U.I. Manslaughter

The bill increases a D.U.I. which causes the death of any human being from a second degree felony to a first degree felony, punishable by up to thirty years in prison. The bill also eliminates the separate first degree felony of D.U.I. manslaughter where the defendant should have known of the accident and failed to give information or render aid. As a result, a D.U.I. manslaughter would be a first degree felony regardless of whether the offender stopped to give information or render aid.

Criminal Punishment Code

Under the Criminal Punishment code, any non-capital felony offender can be sentenced for a first offense up to the statutory maximum sentence. The minimum threshold sentence is the lowest sentence which can be imposed and is calculated based on the offenses a defendant is being

sentenced for and the criminal history of the defendant. The ranking of the D.U.I. offenses in the Criminal Punishment Code's offense severity ranking chart would not be changed by this bill. The offense severity ranking chart is only changed to reflect the changes in the felony degrees. Thus, while the minimum sentence has not been increased for each of the D.U.I. offenses, the maximum allowable sentence has increased.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 316.193.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that a fourth or subsequent conviction for driving under the influence is a ~~second-degree~~ felony rather than a third degree felony. Provides that damaging the property or person of another while driving under the influence is a third degree felony rather than a first degree misdemeanor. Provides that causing serious bodily injury while driving under the influence is a second degree felony rather than a third degree felony. Provides that causing the death of another while driving under the influence is a first-degree felony regardless of whether the person knew or should have known that the accident occurred and failed to give information and render aid.

Section 2: Provides effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments

2. Recurring Effects:

See fiscal comments

3. Long Run Effects Other Than Normal Growth:

See fiscal comments

4. Total Revenues and Expenditures:

See fiscal comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments

2. Recurring Effects:

See fiscal comments

3. Long Run Effects Other Than Normal Growth:

See fiscal comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments

2. Direct Private Sector Benefits:

See fiscal comments

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not met to consider the fiscal impact of this bill. However, the Conference determined that SB 94, which is similar to this bill would have an insignificant impact on the prison population but would have a significant impact on the supervised population.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the bill is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

HB 441

HB 441, sponsored by Representative Betancourt, which was passed by the Committee on Crime and Punishment on March 3, 1999, also amends section 316.193. HB 441 made a third conviction or subsequent D.U.I. a third degree felony while this bill makes a fourth or subsequent D.U.I. a second degree felony.

Strike Everything Amendment

It is anticipated that the sponsor will offer a strike everything amendment to conform the language of this bill to SB 94 which has already traveled through the two Senate committees to which it was assigned. The strike everything amendment would make the following changes to the D.U.I. statute:

- In addition to amending the D.U.I. statute relating to a fourth D.U.I., relating to D.U.I. with serious bodily injury, and relating to D.U.I. manslaughter as discussed above, the strike everything amendment makes corresponding changes to section 327.35, the boating under the influence (B.U.I.) statute.
- The strike-everything amendment provides that prior D.U.I. convictions and prior B.U.I. convictions are both counted for purposes of determining how many prior offenses a defendant has committed.
- Currently, the D.U.I. and B.U.I. statutes make it a first degree misdemeanor to commit a D.U.I. or B.U.I. which causes damage to the person or property of another, regardless of the amount of the damage. The strike everything amendment increases the degree of crime for a D.U.I. or B.U.I. with property damage valued in excess of \$10,000 from a first degree misdemeanor to a third degree felony. D.U.I. or B.U.I. with damage to property of another valued less than \$10,000 would remain a first degree misdemeanor.
- The strike everything amendment lowers the blood-alcohol level threshold for enhanced penalties for D.U.I./B.U.I. from .20 (grams of alcohol per 210 liters of breath) to .16. When the enhanced penalties for a blood alcohol level over .20 were enacted, .20 was twice the legal limit. Now, the legal limit is .08 and .16 is double the legal limit.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:
Prepared by:

Staff Director:

Trina Kramer

J. Willis Renuart