

STORAGE NAME: h0441a.cp

DATE: March 9, 1999

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

BILL #: HB 441

RELATING TO: DUI/Third Conviction Penalty

SPONSOR(S): Rep. Betancourt

COMPANION BILL(S): None

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

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
 - (2) CORRECTIONS
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

Under current law, a third Driving Under the Influence (D.U.I.) is punishable by up to 1-year in jail and a maximum fine of \$5,000. Current law allows a fourth D.U.I. to be reclassified as a 3rd-degree felony. The bill reclassifies a third D.U.I. conviction as a 3rd-degree felony, punishable by up to 5-years in prison.

Current law provides that a person convicted of a third D.U.I. and who has a blood alcohol level of 0.20 or higher or who was accompanied in the vehicle by a person under 18 years of age must pay a minimum of \$2,000 and no more than \$5,000. The bill amends the minimum payment to \$3,500 and no more than \$7,000.

The bill ranks the new felony offense of committing a third D.U.I. as a level 6 offense for the purposes of the sentencing code. Currently, a fourth D.U.I. is a level 6 felony offense.

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 four 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 of an accident, the maximum penalty is a \$1,000 fine and 9-months in jail.
- 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).

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, 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 (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:

Under current law, a third Driving Under the Influence (D.U.I.) is punishable by up to 1-year in jail and a maximum fine of \$5,000. Current law allows a fourth D.U.I. to be reclassified as a 3rd-degree felony. The bill reclassifies a third D.U.I. conviction as a 3rd-degree felony, punishable by up to 5-years in prison.

Current law provides that a person convicted of a third D.U.I. and who has a blood alcohol level of 0.20 or higher or who was accompanied in the vehicle by a person under 18 years of age must pay a minimum of \$2,000 and no more than \$5,000. The bill amends the minimum payment to \$3,500 and no more than \$7,000.

The bill ranks the new felony offense of committing a third D.U.I. as a level 6 offense for the purposes of the sentencing code. Currently, a fourth D.U.I. is a level 6 felony offense.

The bill has an effective date of October 1, 1999.

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?

Yes, the bill authorizes an increase in fees for persons who commit a third D.U.I.

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?

N/A

- 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 and 921.0022, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Makes a third D.U.I. a third degree felony, and increases fines for a third D.U.I. committed with a person under 18 in the vehicle, or committed with a blood-alcohol level of 0.20 or higher.

Section 2: Ranks a felony third D.U.I. as a level six offense for the purposes of the sentencing guidelines.

Section 2: Creates an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference made the following projections for the fiscal impact of House Bill 441:

FISCAL YEAR	ANNUAL OPERATING COSTS	ANNUAL FIXED CAPITAL OUTLAY COSTS	TOTAL ANNUAL FUNDS
1999-2000	\$885,856	\$3,927,932	\$4,813,788
2000-2001	\$3,369,208	\$2,824,874	\$6,194,081
2001-2002	\$6,166,220	\$2,427,523	\$8,593,743
2002-2003	\$8,440,528	\$1,193,508	\$9,634,036
2003-2004	\$10,133,817	\$1,228,025	\$11,361,842
TOTAL	\$28,995,629	\$11,601,861	\$40,597,490

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:

Reclassification of Other Offenses

The law already makes a third conviction for driving while license suspended (D.W.L.S.), a felony. There is no reason why a third conviction for a more serious offense such as D.U.I. should not also be made a felony, as well. However, an offender who commits a 1st D.W.L.S. will often receive a withhold of adjudication which does not count as a conviction. Therefore, a person often has to plea to 3 D.W.L.S.'s before the fourth is charged as a felony. On the other hand, a judge is required to impose an adjudication of guilt for all D.U.I. sentences.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Betancourt offered five amendments in the Crime and Punishment Committee on March 3, 1999. All five amendments were approved by the committee and are traveling with the bill. The first and second amendments are technical. The third amendment lowers the blood alcohol and breath alcohol levels necessary for enhanced penalties for a DUI from 0.20 to 0.16. When the enhanced penalties for 0.20 were enacted, 0.20 was twice the legal limit. Now the legal limit is .08 and 0.16 is double the legal limit. The fourth and fifth amendments make the same changes to the law for boating under the influence that are being made to the statute prohibiting driving under the influence.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

J. Willis Renuart

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