

STORAGE NAME: h0071b.cp

DATE: March 5, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 71

RELATING TO: Homicide

SPONSOR(S): Representative Stafford

COMPANION BILL(S): SB 72(i)

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

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

I. SUMMARY:

The bill increases the penalty for vehicular or vessel homicide from a third degree felony to a second degree felony. The bills also increases the penalty for vehicular and vessel homicide from a second degree felony to a first degree felony when the driver fails to render aid or fails to give information if the driver knew or should have known that an accident occurred. The bill would not change the offense severity level rankings under the Criminal Punishment Code for these offenses.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 782.071, F.S., 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 wording in s. 782.072, F.S., the vessel homicide statute, is almost identical to wording in the vehicular homicide statute. *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, which is also a third degree felony, requires the same elements as vehicular homicide but involves the reckless operation of a vessel. s. 782.072(1), F.S. See *Marquez, supra*.

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. 327.030(1), F.S., if there is a vessel homicide]. ss. 782.071(2) and 782.072(2), F.S. In the case of a vehicular accident resulting in an injury or death, s. 316.062, F.S., imposes a duty upon the driver of any vehicle involved in the accident to report certain statutorily-specified information to the police officer on the scene, or if no officer is present, to report the information to the nearest law enforcement office. Additional duties imposed upon a driver involved in an accident resulting in an injury are to provide the previously noted information to others involved in the accident and to render reasonable assistance to those injured in the accident. Section 327.030(1), F.S., imposes similar, though not identical, duties upon the operator of a vessel involved in an accident resulting in an injury or death. A willful violation of s. 316.062, F.S., or a violation of s. 327.030(1), F.S., is a third degree felony.

Until October 1, 1998, Florida's criminal sentencing structure for most felony offenses was the sentencing guidelines (the "guidelines"). The Criminal Punishment Code (the "Code") is now the criminal sentencing structure for felony offenses committed on or after October 1, 1998, the date the Code took effect; felony offenses committed prior to October 1, 1998, will be sentenced under the sentencing guidelines (the "guidelines"). Felony offenses are ranked by the Legislature in offense severity level ranking charts (one chart for offenses sentenced under the guidelines, s. 921.0012, F.S. (1998 Supp.); one chart for offenses sentenced under the Code, s. 921.0022, F.S. (1998 Supp.), based upon lawmakers' determination of the harm or potential harm that is caused by these offenses to the community. There are 10 offense severity levels (Level 10 is the highest offense severity level). For purposes of sentencing under the guidelines or the Code, third-degree felony vehicular and vessel homicide are ranked as Level 7 offenses; second degree felony vehicular and vessel homicide are ranked as Level 8 offenses.

Under the Code, the "lowest permissible sentence" (the minimum sentence that the trial court may impose absent a valid reason for mitigation) is scored for a felony offense. The permissible range for sentencing is the lowest permissible sentence up to, and including, the statutory maximum penalty for the felony degree of that offense; however, if the lowest permissible sentence under the Code for the offense exceeds the statutory maximum penalty for the felony degree of the offense, the lowest permissible sentence applies. s. 921.0023(2), F.S. Assuming a defendant's vehicular or vessel homicide offense is the first and only offense for which the defendant is being sentenced, the lowest permissible sentence is 9.25 years, which exceeds the statutory maximum penalty of 5 years for a third degree felony, as provided in s. 775.082, F.S. Assuming the same scenario described above except that the defendant is being sentenced for second degree felony vehicular or vessel homicide, the lowest permissible sentence is 10.4 years, which does not exceed the statutory maximum penalty of 15 years, as provided in s. 775.082, F.S.

B. EFFECT OF PROPOSED CHANGES:

House Bill 71 would amend s. 782.071, F.S. (vehicular homicide), and s. 782.072, F.S. (vessel homicide), to increase the felony degrees of vehicular and vessel homicide offenses. The bill would increase the felony degree of third-degree felony vehicular homicide and vessel homicide to make them second degree felonies, and would also increase the felony degree of second-degree felony vehicular and vessel homicide to make them first degree felonies. Section 921.0022, F.S., which contains the offense severity level ranking chart for sentencing of most felony offenses under the Criminal Punishment Code, would be amended to modify the descriptions of the vehicular and vessel homicide offenses in the ranking chart to reflect the proposed change in the felony degree of those offenses; however, the bill would not change the severity level ranking of those offenses.

The increase by one felony degree of the vehicular and vessel homicide offenses would place those offenses within a group of offenses (second degree felony or first degree felony offenses) that includes the majority of offenses involving serious bodily injury or death.

By increasing the felony degree of third-degree vehicular and vessel homicide offenses to make those offenses second degree felonies, the bill would provide the sentencing court with a considerably broader sentencing range for those offenses. Currently, absent a sentence mitigation, the sentence for a first time offender for third-degree felony vehicular or vessel homicide would be 9.25 years, the lowest permissible sentence. The court cannot exceed 9.25 years because this sentence length is already greater than the statutory maximum penalty for a third degree felony, which is 5 years. However, if third-degree felony vehicular or vessel homicide become second degree felonies, the first time offender being sentenced for either of those offenses could receive a sentence within the sentencing range of 9.25 years (the lowest permissible sentence) up to, and including, 15 years (the statutory maximum penalty for a second degree felony).

Currently, absent a sentence mitigation, the sentence for the first time offender for second-degree felony vehicular or vessel homicide would be from 10.4 years (the lowest permissible sentence) to 15 years (the statutory maximum penalty for a second degree felony). However, if second-degree felony vehicular or vessel homicide become first degree felonies, the first time offender being sentenced for either of those offenses could receive a sentence within the sentencing range of 10.4 years (the lowest permissible sentence) up to, and including, 30 years (the statutory maximum penalty for a first degree felony).

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?

None

(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?

N/A

- 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:

782.071, 782.072, 921.0022

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

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:

In the calender year 1997-98 a total of 13 offenders were admitted into the prison system for vehicular or vessel homicide according to the Department of Corrections. Such a small number of inmates would create an insignificant fiscal impact to the Department of Corrections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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