

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.)

BILL: SB 72

SPONSOR: Senator Campbell

SUBJECT: Homicide/Vehicular and Vessel

DATE: November 20, 1998 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 72 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. The bill would not change the offense severity level rankings under the Criminal Punishment Code for any of these offenses. The act would take effect on October 1, 1999.

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

II. 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*.

“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).

Driving recklessly means driving with a willful or wanton disregard for safety. *See State v. May*, 670 So.2d 1002 (Fla. 2d DCA 1996). "Willful" means "intentional, knowing, and purposeful," and "wanton" means with a "conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property." *W.E.B. v. State*, 553 So.2d 323, 326 (Fla. 1st DCA 1989) (quoting Fla. Std. Jury. Instr. (Misd.) (reckless driving)). In other words, the degree of culpability required to prove reckless driving is less than culpable negligence, which is the standard for manslaughter, but more than a mere failure to use ordinary care. *See McCreary v. State*, 371 So.2d 1024 (Fla.1979); *State v. Esposito*, 642 So.2d 25 (Fla. 4th DCA 1994). Although the Defendant need not have foreseen the specific circumstances causing the death of the victims, it is sufficient that the Defendant should have reasonably foreseen that the same general type of harm might occur if he knowingly drove his vehicle under circumstances that would likely cause death or great bodily harm to another. *See W.E.B.*, 553 So.2d at 323. Therefore, to determine whether the Defendant was driving recklessly, the question is whether the Defendant could reasonably foresee that if he knowingly drove his vehicle in such a manner and under such conditions as he did, he was likely to cause death or great bodily harm; the victim's conduct is irrelevant unless it was the sole proximate cause of the homicide or unless there is some reason why it would be unjust or unfair to impose criminal liability. *See Union v. State*, 642 So.2d 91, 92 (Fla. 1st DCA 1994). Thus, the focus is on the defendant's actions, i.e., what are the circumstances under which he knowingly drove, and was it reasonably foreseeable that death or great bodily harm could result.

Lewek v. State, 702 So.2d 527, 530-31 (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. 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 most felony offenses committed on or after October 1, 1998, the date the Code took effect; most felony offenses committed prior to October 1, 1998, will be sentenced under the sentencing guidelines (the “guidelines”). Most 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.

While vehicular homicide and vessel homicide are third degree felonies, 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. Arguably, the felony degree of vehicular and vessel homicide may have more of a bearing on mitigating a sentence for either of these offenses, especially in the case of a first time offender, than on mitigating a sentence for an offense involving injury or death that is of a greater felony degree. According to the Office of Economic and Demographic Research, the sentence mitigation rate for third-degree felony vehicular and vessel homicide offenses in 1997 appears to be 56 percent.

III. Effect of Proposed Changes:

Senate Bill 72 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).

The act would take effect on October 1, 1999.

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:

The Criminal Justice Estimating Conference (CJEC) has not yet convened to consider the fiscal impact, if any, of Senate Bill 74, and therefore a fiscal impact statement from the CJEC was unavailable at the time this analysis was completed.

In a preliminary analysis of the bill by the Department of Corrections which was provided to staff, the department indicated that the effect of the bill on the offender population is indeterminate as the range of sentencing is broad, the maximum penalty is discretionary, and the minimum available sanction would not be changed by the bill.

In a preliminary analysis of the bill by the Office of Economic and Demographic Research, states the following:

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 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. The mean length for these offenders was 113 months), nearly 3 years less than the recommended sentence. Of the remaining 15 persons sentenced in 1997, 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 changes 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 [bedspace] 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.
