

STORAGE NAME: h0151s1a.jud

DATE: December 7, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 151

RELATING TO: Driving Under the Influence

SPONSOR(S): Committee on Crime & Punishment and Representative Dockery

TIED BILL(S): None

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 1
 - (2) JUDICIARY YEAS 8 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 151 extends the period of probation allowed in misdemeanor DUI cases from one year (which would include periods of incarceration if ordered) to an additional five years for the purpose of completing payment of restitution and court costs. The additional period of probation could apply regardless of whether or not incarceration was included as a condition of probation. CS/HB 151 would keep the offender on probation throughout the extended period to make payments toward restitution and court costs. If, however, the defendant has satisfied all financial obligations within the first year of probation and is otherwise in compliance with the terms of probation, the probationary period must be terminated. Under CS/HB 151, offenders refusing to pay these costs would be subject to the same criminal penalties of the original DUI offense.

CS/HB 151 also amends s. 948.15, F.S., to make it conform to the changes made to s. 316.193.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

PRESENT SITUATION:

DUI Penalties

The offense of "Driving Under the Influence" (excluding cases involving serious bodily injury, death, or a fourth or subsequent offense) is punishable as a misdemeanor offense. "Driving Under the Influence" (DUI) involving property damage, or physical injury which is less than "serious bodily injury," is punishable as a first degree misdemeanor as provided in s. 775.082, F.S. For cases not involving injury or property damage, a hybrid misdemeanor sentencing criterion has been established. [s. 316.193, F.S.].

Under this hybrid sentencing criterion, persons found guilty of DUI with a breath or blood alcohol level of .08 or higher are subject to fines ranging from a minimum of \$250 for a first offense to a maximum of \$2500 for a third offense. They are also subject to imprisonment as follows:

1. Not more than 6 months for a first conviction.
2. Not more than 9 months for a second conviction.
3. Not more than 12 months for a third conviction.

Persons found guilty of DUI with an elevated breath or blood alcohol level of .20 or higher are subject to fines ranging from a minimum of \$500 for a first offense to a maximum of \$5000 for a third offense. They are also subject to imprisonment as follows:

1. Not more than 9 months for a first conviction.
2. Not more than 12 months for a second or third conviction.

Probation is a component of all sentences for cases of DUI in Florida. The maximum period of probation for a misdemeanor DUI conviction is one year. Section 316.193(6)(a), F.S., further provides that ". . . the total period of probation and incarceration may not exceed one year."

Restitution in Misdemeanor Cases

Section 948.032, F.S., provides that any restitution ordered by the trial court must be made a condition of probation when probation is ordered. Ordinarily, offenders are placed on a period

of probation and required to make monthly payments toward satisfaction of the financial portion of their sentence.

If an offender on probation fails to make the necessary payments, he or she is reported to the court by the supervising probation officer and a "Violation of Probation" hearing is conducted. At the hearing the court will determine whether the offender violated the condition of probation by refusing to pay. If the court finds the offender in violation, the court may impose any sentence that the court could have imposed at the original sentencing with credit only for the time spent incarcerated for the offense. [s. 948.06(1), F.S.]. However, if the court determines that the offender does not have the ability to pay, an offender may not be punished for the failure to pay fines or restitution. See *Coxon v. State*, 365 So. 2d 1067 (Fla. 2nd DCA 1979). See Article 1, Section 11 of the Florida Constitution ("No person shall be imprisoned for debt, except in cases of fraud.")

Prior to October 1, 1999, a court would lose jurisdiction to enforce a restitution order when the period of probation expired. Effective October 1, 1999, an amendment to s. 775.089, F.S., extends the jurisdiction a court has to enforce orders of restitution in misdemeanor cases for a period not to exceed five years. [Chapter 99-358, Laws of Florida]. This new provision provides:

- [c] Notwithstanding this subsection, a court that has ordered restitution for a misdemeanor offense shall retain jurisdiction for the purpose of enforcing the restitution order for any period, not to exceed 5 years, that is pronounced by the court at the time restitution is ordered. [s. 775.089(3)(c), F.S.]

For misdemeanor cases, including DUI cases, the effect of this recent change will be to extend the jurisdiction of the court to enforce orders of restitution beyond the one year period of probation through its contempt power. Once the DUI offender is outside the period of probation, if the court determines that an offender has refused to pay restitution, the court could hold the offender in contempt of court.

If restitution is not made and the defendant is unable to pay, or if the court loses jurisdiction over a case, then the court may enter a "civil restitution lien" against the offender which may be collected in civil court if the offender should ever acquire wealth. See sections 775.089 and 960.29, et. seq., F.S. The civil judgement must be ordered before the court's jurisdiction over the case and the offender expires.

Section 948.06 covers probation violation and the failure to pay restitution or costs. If an offender does not pay restitution, the court may consider alternative measures to imprisonment. The offender has the burden of showing, through clear and convincing evidence, that he or she is unable to pay despite bona fide efforts to make payment. Only if the alternative measures fail to fulfill the state's interest in punishment and deterrence may a court imprison an offender after he or she shows a bona fide, yet unsuccessful, effort to pay the costs or restitution.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 151 extends the period of probation allowed in misdemeanor DUI cases from one year (which would include periods of incarceration if ordered) to an additional five years for the purpose of completing payment of restitution and court costs. The additional period of probation could apply regardless of whether or not incarceration was included as a condition of probation. CS/HB 151 would keep the offender on probation throughout the extended period to make payments toward restitution and court costs. If, however, the defendant has satisfied

all financial obligations within the first year of probation and is otherwise in compliance with the terms of probation, the probationary period must be terminated. Under the bill, the court could address a refusal to pay restitution or court costs as a violation of probation rather than as a matter of contempt of court. Section 948.06 would then govern the possibility of subsequent imprisonment due to a failure to pay. Under CS/HB 151, offenders refusing to pay these costs would be subject to the same criminal penalties of the original DUI offense.

CS/HB 151 also amends s. 948.15, F.S., to make it conform to the changes made to s. 316.193.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 316.193, F.S. relating to extending the period of probation for misdemeanor DUI offenses.

Section 2. Amends s. 948.15, F.S.

Section 3. Provides an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate. There will be increased costs associated with the extended period of probation supervision, and a foreseeable increase in violation of probation hearings relating to nonpayment of court costs and restitution. On the other hand, it is also anticipated that the increase in consequences for failure to make the prescribed payments will

result in an increase in restitution amounts collected by victims of DUI offenders, as well as increase the collection of court costs.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime and Punishment adopted a strike-everything to HB 151 which extended the period of additional probation authorized under the bill from four years to five years for a misdemeanor DUI case if restitution is ordered. The five year period could apply regardless of whether or not incarceration was included as a condition of probation. If, however, the defendant has satisfied all financial obligations within the first year of probation and is otherwise in compliance with the terms of probation, the probationary period must be terminated. The strike-everything amendment also amends s. 948.15, F.S., to make it conform to the changes made s. 316.193.

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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

David de la Paz

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