

STORAGE NAME: h0203s2.cp

DATE: December 7, 1999

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

BILL #: CS/CS/HB 203

RELATING TO: Unattended Child in Motor Vehicle

SPONSOR(S): Committee on Crime & Punishment, Committee on Judiciary & Rep. Cantens

TIED BILL(S):

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

- (1) JUDICIARY YEAS 6 NAYS 0
 - (2) CRIME AND PUNISHMENT YEAS 7 NAYS 0
 - (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

CS/CS/HB 203 amends s. 316.6135, F.S., creating a noncriminal penalty and fine of up to \$100 for persons who leave a child younger than 6 years of age unattended and unsupervised in a motor vehicle. The committee substitute defines the terms "unattended" and "unsupervised".

The committee substitute provides that persons who violate the section and who have previously been found to have violated the section, or who leave a child unattended for any period of time if the motor of the vehicle is running or the health of the child is in danger commits a misdemeanor of the first degree.

The committee substitute has an effective date of October 1, 2000.

The committee substitute does not appear to have any significant fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

Creates new criminal penalties for violations of the committee substitute's provisions.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Section 316.6135, F.S., prohibits a parent, legal guardian, or other person responsible for a child younger than 6 years of age from leaving that child unattended or unsupervised in a motor vehicle for a period in excess of 15 minutes, and prohibits such persons from leaving a child unattended for any period of time if the motor of the vehicle is running or the health of the child is in danger. s. 316.6135(1), F.S. A person who violates the provisions of subsection (1) is guilty of a noncriminal traffic infraction punishable by a fine of not more than \$100, and by a fine of not less than \$50 and not more than \$500 if the motor of the vehicle was running or the health of the child was in danger at the time of the violation. s. 316.6135(2), F.S.

A law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle in violation of s. 316.6135(1), F.S., may use whatever means are necessary to protect the minor child and to remove the child from the vehicle. s. 316.6135(3), F.S. If the child is removed from the immediate area, notification should be placed on the vehicle. Sec. 316.6135(4), F.S. In such cases, the child is to be remanded to the custody of the Department of Children and Family Services pursuant to Chapter 39, F.S., unless the law enforcement officer is able to locate the parents or legal guardian or other person responsible for the child. s. 316.6135(5), F.S.

C. EFFECT OF PROPOSED CHANGES:

CS/CS/HB 203 amends s. 316.6135, F.S., to provide that no parent, legal guardian or other person responsible for a child younger than six years of age shall leave such child unattended and unsupervised in a motor vehicle. Unlike the current statute which provides that no parent shall leave a child under the age of six unattended or unsupervised *for longer than fifteen minutes*, this bill prohibits a parent from leaving a child under the age of six unsupervised and unattended *for any length of time*. The bill provides that any person who violates the provisions of this subsection is guilty of a noncriminal traffic infraction, punishable by a fine of up to \$100.

The committee substitute provides definitions of the words "unattended" and "unsupervised" which are not defined in the current statute. The committee substitute defines "unattended" to mean that the parent, legal guardian, or the person responsible for a child is outside of the motor vehicle, more than 10 feet from the child and unable to continuously observe that child.

The committee substitute defines "unsupervised" to mean that no person older than 11 years of age remains in the motor vehicle with the child.

The committee substitute also provides that any parent, legal guardian or other person responsible for a child younger than 6 years of age commits a misdemeanor of the first degree punishable by up to one year in prison and a fine of up to \$1,000 if that person:

- a) Leaves a child unattended and unsupervised and has previously been found guilty of the same offense or
- b) Leaves a child unattended for any period of time if the motor of the vehicle is running or the health of the child is in danger.

The committee substitute does not alter the current statute which provides that a law enforcement officer may use whatever means necessary to protect a minor child or remove that child from a vehicle where the officer observes a violation of s. 316.6135, F.S.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Defines "unattended" to mean the situation where a parent, legal guardian, or the person responsible for a child is outside the motor vehicle, more than 10 feet from the child, and is unable to continually observe that child. Defines "unsupervised" to mean the situation where no person older than 11 years of age remains in a motor vehicle with a child.

Provides that persons who leave a child younger than 6 years of age unattended and unsupervised in a motor vehicle are guilty of a noncriminal traffic infraction punishable by a \$100 fine.

Provides that any parent, legal guardian, or other person responsible for a child younger than 6 years of age who commits a violation of s. 316.6135(2), F.S., and who has previously been found to have violated that subsection or who leaves a child unattended for any period of time if the motor vehicle is running or the health of the child is in danger commits a misdemeanor of the first degree.

Section 2. Provides an effective date of October 1, 2000.

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:

This committee substitute, which creates a first degree misdemeanor offense, will not have an prison bed impact on the Department of Corrections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

While the committee substitute may have the effect of increasing the responsibility of law enforcement for enforcing its new provisions, and may therefore require a city or county to expend funds to meet this requirement, the committee substitute creates a criminal penalty and as such is exempt from the mandates provision of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does reduce the revenue raising authority of a city or county.

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

The committee substitute does not reduce the amount of state tax shared with a city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Comments of Judiciary Staff

The bill as drafted may create unanticipated violations of the law. Section 316.003(21), F.S., defines a "motor vehicle" as "[a]ny self-propelled vehicle not operated upon rails or guideway, but not including any bicycle or moped." Given that definition and the definition of "unattended" in the bill, a parent, legal guardian or other person responsible for a child younger than 6 years of age will violate the law by driving a recreational vehicle where the child is at the back of the vehicle (more than 10 feet away) and out of the responsible person's line of sight. In addition, the act of paying for gas at a gas station may result in a violation, even though the responsible person is away from the vehicle for a few minutes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On November 2, 1999, the Committee on Judiciary adopted two amendments and made the bill a committee substitute. The first amendment redefines the term "unattended" to require the parent or guardian, etc., to be outside of the motor vehicle, more than 10 feet from the child, and unable to continually observe the child. The second amendment clarifies the basis for the application of criminal penalties, inserting a semicolon to denote that a person who commits more than one violation of the bill **or** who leaves a child unattended for any period of time if the motor vehicle is running or the health of the child is in danger commits a misdemeanor of the first degree.

On December 7, 1999, the Committee on Crime & Punishment adopted a strike-everything amendment and made the bill a committee substitute. Before the bill was amended, it provided that no person shall leave a child under the age of six unattended or unsupervised. Unattended means that the parent, legal guardian, or the person responsible for the child is outside the vehicle, more than 10 feet from the child, and unable to continuously observe the child. Unsupervised means that no person older than 11 years of age remains in the motor vehicle with the child. Before the amendment, a parent would have violated this section if they either left their child unattended or if they left their child unsupervised. The language could have caused unintended violations of law. For example, if a parent was inside a store and could not see their five year old child but a sixteen year old was in the car with the five year old, the parent would have violated the section before it was amended because, while the child was not unsupervised, the child was unattended. Likewise, if a parent was directly outside the car which contained their five year old child but there was no one in the car over eleven years old, the parent would have violated the section because, while the child was not unattended, the child was unsupervised. The strike everything amendment changed the wording of the section to provide that "no parent, legal guardian, or other person responsible for a child younger than 6 years of age shall leave such child unattended and unsupervised in a motor vehicle". Also, the strike everything amendment made a first time violation of the section punishable by a fine of up to \$100 rather than \$10.

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VII. SIGNATURES:

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