

STORAGE NAME: h0203s1.jud

DATE: November 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 203

RELATING TO: Unattended Child in Motor Vehicle

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

TIED BILL(S):

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

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

I. SUMMARY:

CS/HB 203 amends s. 316.6135, F.S., creating a noncriminal penalty and fine of \$10 for persons who leave a child younger than 6 years of age unattended or unsupervised in a motor vehicle. The bill defines the terms "unattended" and "unsupervised."

The bill provides that persons who violate the prohibition and who have previously been found to have violated that prohibition, or who 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 commits a misdemeanor of the first degree.

The bill has an effective date of October 1, 2000.

The bill 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 bill'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, or 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. Current law requires notice to be left on the vehicle if the law enforcement officer removes the child from the immediate area. s. 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/HB 203 amends s. 316.6135, F.S., creating a noncriminal penalty and fine of \$10 for persons who leave a child younger than 6 years of age unattended or unsupervised in a motor vehicle.

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

The bill removes the current fine provisions (\$100 or \$50-to-\$500) of s. 316.6135(2), F.S.

The bill creates a criminal penalty for persons who violate the prohibition and who have previously been found to have violated that prohibition, or who leave a child unattended for any specified period of time if the motor of the vehicle is running or the health of the child is in danger. Such persons commit a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S., and will face a definite term of imprisonment not exceeding one year and a fine not to exceed \$1,000. See ss. 775.082(4)(a) and 775.083(1)(d), F.S.

The bill clarifies 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 or unsupervised in a motor vehicle are guilty of a noncriminal traffic infraction punishable by a \$10 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:

Not estimated.

2. Expenditures:

Not estimated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not estimated.

2. Expenditures:

Not estimated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not estimated.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

While the bill 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 bill 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 bill does reduce the revenue raising authority of a city or county.

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

The bill 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:

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.

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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.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson

P.K. Jameson