

STORAGE NAME: h1401.hcc.doc
DATE: March 29, 2001

**HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS**

BILL #: HB 1401
RELATING TO: Driving Under the Influence
SPONSOR(S): Representative(s) Pickens
TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (2) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The Committee on Crime Prevention, Corrections and Safety adopted a strike-everything amendment which is traveling with the bill. For details, see amendment section.

The bill makes the following changes to the DUI statute:

- The bill requires a person who has been convicted of a first, second, or third DUI offense to be incarcerated for not less than 48 hours.
- The bill provides that any person who is convicted of a third or subsequent DUI within 10 years after the first DUI is guilty of a third degree felony. The bill further requires that the minimum penalty for such offense shall be a fine of not less than \$1,000 and a minimum mandatory term of imprisonment of 30 days. The bill provides that any person who is convicted of a fourth or subsequent DUI within 10 years of the first DUI is guilty of a third degree felony, punishable by a minimum of a \$1,000 fine and 30 days in jail.
- The bill provides that any person who is convicted of DUI who at the time of the offense was driving with a license that was cancelled, suspended or revoked for a prior DUI is guilty of a third degree felony. The bill also provides that any person who is convicted of DUI who at the time of the offense was driving with a license restricted solely to business or employment purposes is guilty of a third degree felony. The bill also provides that the minimum penalty for these offenses is a \$1,000 fine and 30 days in jail.
- The bill amends the provisions regarding enhanced penalties for DUI when the driver's blood alcohol level is over .20 or the driver is accompanied in the vehicle by a person under the age of 18 years. The bill removes the maximum fine of \$5,000 and the maximum sentence of 12 months for a third or subsequent conviction of this offense.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 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

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

A driving under the influence (DUI) conviction requires proof of the following elements:

That the person was driving or in actual physical control of a vehicle and either

- a. The person's blood alcohol level at the time was .08% or greater or
- b. The person was under the influence of alcohol or a controlled substance to the extent that their normal faculties were impaired.

s. 316.193(1), F.S.

Currently the penalties for DUI and for DUI when the blood alcohol level of the driver was over .20 or when the driver was accompanied in the vehicle by a person under the age of 18 are as follows:

	Maximum Incarceration	Incarceration Over .20 Blood Alcohol Level	Fine	Fine Over .20 Blood Alcohol Level
1st Offense	6 months jail	9 months jail	\$250-\$500	\$500-\$1,000
2nd Offense	9 months jail	12 months jail	\$500-\$1,000	\$1,00-\$2,000
3rd Offense	12 months jail	12 months jail	\$1,000-\$2,500	\$2,000-\$5,000
4th Offense	5 years in prison	5 years prison	\$1,000-\$5,000	\$1,000-\$5,000

s. 316.193(2), F.S.¹

Further, there are mandatory jail sentences associated with certain repeat DUI offenses. For example, if a person is convicted of a second DUI that occurred within 5 years after the date of the prior conviction, he or she must serve a mandatory minimum of 10 days in jail. s. 316.193(6)(b), F.S. For a third or subsequent DUI conviction for an offense that occurs within 10 years after the date of a prior conviction, the person must serve at least 30 days in jail. s. 316.193(6)(c), F.S.

¹ Section 316.193(3), F.S. also contains enhanced penalties for DUI with property damage, DUI with serious bodily injury and DUI manslaughter.

C. EFFECT OF PROPOSED CHANGES:

The original bill makes the following changes to the DUI statute:

- The bill requires a person who has been convicted of a first, second, or third DUI offense to be incarcerated for not less than 48 hours.
- The bill also provides that any person who is convicted of a third or subsequent DUI within 10 years after the first DUI is guilty of a third degree felony. The bill further requires that the minimum penalty for such offense shall be a fine of not less than \$1,000 and a minimum mandatory term of imprisonment of 30 days.
- The bill provides that any person who is convicted of a fourth or subsequent DUI within 10 years of the first DUI is guilty of a third degree felony, punishable by a minimum of a \$1,000 fine and 30 days in jail.
- The bill provides that any person who is convicted of DUI who at the time of the offense was operating a motor vehicle while his or her license or privilege was cancelled, suspended or revoked pursuant to s. 322.2615 is guilty of a third degree felony, punishable by a minimum of a \$1,000 fine and 30 days in jail. Section 322.2615 relates to the suspension of a driver's license after an arrest for driving with a blood alcohol level of over .08 or for refusing to submit to a breathalyzer test.
- The bill provides that any person who is convicted of a DUI violation who at the time of the offense was driving with a license restricted solely to business or employment purposes is guilty of a third degree felony punishable by a minimum of a \$1,000 fine and 30 days in jail.
- The bill amends the provisions regarding enhanced penalties for DUI when the driver's blood alcohol level is over .20 or the driver is accompanied in the vehicle by a person under the age of 18 years. The bill requires that a person convicted of a first or second offense be imprisoned for not less than 48 hours. The bill also removes the maximum fine of \$5,000 and the maximum sentence of 12 months for a third or subsequent conviction of this offense. The bill also requires that one hundred dollars from each fine imposed under this enhanced DUI penalty be remitted to the county correctional facility in which the offender convicted of a violation of this subsection serves his or her term of imprisonment.

Note: See amendment section for strike everything amendment adopted by Committee on Crime Prevention, Corrections and Safety.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 316.193, F.S. regarding DUI.

Section 2: Amends s. 921.0022, F.S. regarding Offense Severity Ranking Chart of Criminal Punishment Code.

Section 3: Provides effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill increases several fines for DUI offenses which may lead to increased revenue for the state.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill requires that one hundred dollars from each fine imposed for DUI with a blood alcohol level over .20 be remitted to the county correctional facility in which the offender convicted of a violation serves his or her term of imprisonment. The bill also increases other fines for DUI offenses.

2. Expenditures:

The bill requires any person convicted of a first, second or third DUI to serve a minimum of 48 hours in jail. The bill will also create two new offenses: DUI with a suspended license and DUI with a restricted license. These offenses are third degree felonies with a thirty day mandatory minimum sentence.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill on the Department of Corrections. The bill creates two third degree felony offenses which are ranked as Level 6 offenses in the Offense Severity Ranking Chart of the Criminal Punishment Code. The lowest permissible sentence for a Level 6 offense is a non-state prison sanction. Thus, this bill will probably have an insignificant 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:

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 counties or municipalities 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:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill amends the DUI statute to provide that a person convicted of a third or subsequent DUI within ten years of the first DUI is guilty of a third degree felony punishable by a minimum of 30 days imprisonment and a \$1,000 fine. However, the bill also provides that a person convicted of a fourth or subsequent DUI also commits a third degree felony punishable in the same manner. These provisions appear to be duplicative. Also, current law provides that a person who has been convicted of a second DUI within five years after the date of a the first conviction must be imprisoned for at not less than 10 days. s. 316.193(6)(b), F.S. Likewise, a person who has been convicted of a third or subsequent offense that occurs within a period of 10 years after the date of a prior conviction must be imprisoned for not less than 30 days. s. 316.193(6)(c), F.S. The bill is in conflict with these provisions.

Further, while the bill provides penalties for a third DUI conviction, for a third or subsequent DUI conviction that occurs within 10 years after the first conviction as well as for a fourth or subsequent conviction that occurs within 10 years of the first conviction, the bill does not provide for a fourth or subsequent DUI that occurs more than 10 years after the first DUI.

Current law provides than a person convicted of a second DUI with a blood alcohol level of .20 or higher must pay a fine of not less than \$2,000 or more than \$5,000. The bill removes the \$5,000 maximum. However, section 775.083 provides that the maximum fine for a DUI offense is \$500 unless a higher amount is specifically authorized by statute. It appears that if the maximum fine were removed from the statute, no fine could be imposed a in excess of the \$2,000 minimum.

The bill provides that any person who is convicted of DUI who at the time of the offense was operating a motor vehicle while his or her license or privilege was cancelled, suspended or revoked pursuant to s. 316.193 or s. 322.2615 is guilty of a third degree felony, punishable by a minimum of a \$1,000 fine and 30 days in jail. Section 322.2615 relates to the suspension of a driver's license by the Department of Highway Safety and Motor Vehicles after an arrest for driving with a blood alcohol level of over .08 or for refusing to submit to a breathalyzer test. However, the bill does not refer to section 322.28 which provides for license suspension or revocation following a DUI conviction.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections and Safety adopted a strike-everything amendment which was offered by the sponsor. The strike-everything amendment makes the following changes to the bill:

- The amendment requires that a person be imprisoned for a minimum of 48 hours for a first, second or third DUI conviction if the defendant's blood alcohol level is over .20 but unlike the bill, does not require that a person be imprisoned for a minimum of 48 hours for a first, second or third conviction for DUI with a blood alcohol level of .08.
- The amendment makes a third DUI a third degree felony if committed within ten years of a prior DUI offense. A person convicted of this offense will be required to serve at least 30 days in prison. The amendment ranks this offense in Level 6 of the Offense Severity Ranking Chart of the Criminal Punishment Code.
- Current law makes a fourth DUI a third degree felony. The amendment will require that a person convicted of a fourth DUI be fined at least \$1,000 and imprisoned for at least 30 days.
- The amendment conforms to the bill in creating a third degree felony offense for a DUI committed while driving with a driver's license which was suspended for a prior DUI . The minimum penalty for this offense will be a fine of \$1,000 and a minimum mandatory term of imprisonment of 30 days. The amendment ranks this offense in Level 6 of the Offense Severity Ranking Chart of the Criminal Punishment Code. The amendment adds a reference to s. 322.28, relating to suspension or revocation of a driver's license for a DUI conviction.
- The amendment conforms to the bill in creating a third degree felony offense for a DUI committed while driving with a driver's license restricted solely to business or employment purposes. The minimum penalty for this offense will be a fine of \$1,000 and a minimum mandatory term of imprisonment of 30 days. The amendment ranks this offense in Level 6 of the Offense Severity Ranking Chart of the Criminal Punishment Code.
- To address the concern raised in the Comments section above, the amendment reinstates the \$5,000 maximum fine for a third DUI conviction where the blood alcohol level is in excess of .20.

The Council for Healthy Communities adopted seven amendments to the strike everything amendment which are traveling with the bill. Representative Pickens offered four amendments. Two of the amendments created a third degree felony offense for a fourth DUI that occurs within 10 years of a prior DUI offense and ranked the offense in Level 7 of the Offense Severity Ranking Chart of the Criminal Punishment Code. Two of the amendments made technical and conforming changes. Representative Heyman offered three amendments which raised the fine for a first, second and third DUI with a blood alcohol level of over .20 by \$100.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz

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AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

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