

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1024

SPONSOR: Criminal Justice Committee and Senator Burt

SUBJECT: DUI

DATE: February 25, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	JU	_____
4.	_____	_____	APJ	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

This CS would revise the penalties for driving under the influence of alcohol or drugs to the extent normal faculties are impaired (DUI) and boating under the influence to the extent normal faculties are impaired (BUI). Specifically, the CS would enhance penalties for DUI and BUI by providing any person who is convicted of a third DUI or BUI within 10 years after any prior DUI or BUI conviction is guilty of a third degree felony. (This offense would be punishable by a fine ranging from \$1,000 to \$5,000, and a term of imprisonment not exceeding 5 years.)

The CS would also require that an ignition interlock device be installed in vehicles of persons convicted of a third (if it occurs within 10 years of a prior conviction) or a fourth DUI.

The CS would require law enforcement officers to order blood testing of all drivers or boat operators involved in accidents involving death or serious bodily injury where there is probable cause to believe the driver or boat operator is under the influence.

Finally, the CS would rank the offense of BUI manslaughter when the offender fails to stop and render aid or give information in the offense severity ranking chart in the same manner as the corresponding DUI offense. It would also require that a court cost of \$135 be imposed for BUI convictions, just as it is for DUI convictions.

This CS would substantially amend the following sections of the Florida Statutes: 316.193, 316.1933, 327.35, 327.353, 921.0022, and 938.07.

II. Present Situation:

Section 316.193, F.S., proscribes driving under the influence of alcohol or drugs to the extent normal faculties are impaired or driving with a blood or breath alcohol level of .08 percent or higher. Penalties for DUI vary according to the frequency of previous convictions, the offender's blood alcohol level (BAL) when arrested, and whether serious injury or death results.

Generally, modified misdemeanor penalties apply when there has been no property damage or personal injury and when there has been fewer than four DUI convictions. For example, a first-time offender is subject to a fine ranging from \$250 to \$500, as well as being subject to serving up to 6 months in county jail. He must also be on probation for up to 1 year and participate in 50 hours of community service. However, if the convicted offender's BAL is .20 percent or higher, or a passenger under 18 years of age is present in the vehicle, the penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months in jail.

A second DUI conviction carries a fine ranging from \$500 to \$1,000 and imprisonment for a period of up to 9 months. However, if that conviction occurs within 5 years of a previous DUI conviction, there is a mandatory imprisonment period of at least 10 days. At least 48 hours of this confinement must be consecutive. Enhanced penalties also apply when the offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle to include a fine ranging from \$1,000 to \$2,000, and imprisonment not exceeding 12 months.

A third or subsequent DUI conviction carries a fine ranging from \$1,000 to \$2,500 and possible imprisonment of up to 12 months. However, if that conviction occurs within 10 years of a previous DUI conviction, there is a 30-day minimum mandatory imprisonment period. At least 48 hours of this confinement must be consecutive. Enhanced penalties also apply when the offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle to include a fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months.

A fourth or subsequent DUI conviction results in a third degree felony penalty, which is punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years.

A DUI offense involving property damage results in a first degree misdemeanor penalty, punishable by a fine not exceeding \$1,000 and/or imprisonment up to 1 year in jail. A DUI offense involving serious injury results in a third degree felony, punishable by a fine not exceeding \$5,000 and/or imprisonment up to 5 years. A DUI offense resulting in death is a second degree felony, punishable by a fine not exceeding \$10,000 and/or imprisonment up to 15 years.

Section 316.193(6), F.S., also requires impoundment or immobilization of the vehicle involved in a DUI offense, unless the court finds that the family of the owner has no other private means of transportation. The period of impoundment or immobilization under the statute is 10 days for a first conviction, 30 days for a second conviction within 3 years of a prior conviction, and 90 days for a third conviction within 5 years of a prior conviction. The impoundment statute has

been upheld against a vagueness challenge by the Florida Supreme Court in *Muller v. State*, 693 So.2d 976 (Fla. 1997).

In addition to these penalties, a DUI conviction also results in driver's license revocation under s. 322.28, F.S., as follows: at least 180 days to 1 year for a first conviction; at least 5 years for a second conviction within 5 years of a prior conviction; and at least 10 years for a third conviction within 10 years from the first of three or more prior convictions.

Section 316.1937, F.S., authorizes the court to order a person convicted of DUI to equip his or her vehicle with an interlock device that has been certified by the Department of Highway Safety and Motor Vehicles. The interlock device must be installed so that the vehicle will not start if the driver's BAL is over 0.05 percent. Violation of the conditions of this section will result in the revocation of the offender's driving privilege and imposition of a fine.

Section 316.1933(1), F.S., permits a law enforcement officer, if the officer has probable cause to believe that a motor vehicle driven by or in actual physical control of a person under the influence of alcohol, chemical substances, or controlled substances caused the death or serious bodily injury of a person, to require the person to submit to a blood test. The officer can use reasonable force to require submission to the test. The statute defines "serious bodily injury" as an injury "which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

Section 327.35, F.S., prohibits boating under the influence (BUI) and provides for penalties. It is analogous to the DUI statute. The laws for failing to submit to a blood or breath-alcohol test parallel those in a DUI situation.

Section 938.07, F.S., imposes an additional \$135 court cost on fines imposed pursuant to DUI violations. It does not impose the court cost for BUI violations.

III. Effect of Proposed Changes:

This CS would increase the penalty for a third DUI or BUI conviction occurring within 10 years after any prior DUI or BUI conviction from a misdemeanor violation to a third degree felony. (A fourth or subsequent DUI conviction would remain a third degree felony.) The CS would make conforming changes related to third or subsequent DUI or BUI convictions involving a blood or breath-alcohol level of .20 or higher or accompaniment by a person younger than 18 years of age. It would also make conforming changes in the offense severity ranking chart in the Criminal Punishment Code.

The CS would also require that an ignition interlock device be installed in vehicles of persons convicted of a third (if it occurs within 10 years of a prior conviction) or a fourth DUI. The judge would be required to order the placement of an approved interlock device on all vehicles (owned individually or jointly that are routinely operated by the offender) for at least two years, at the sole expense of the offender.

The CS would require law enforcement officers to order blood testing of all drivers or boat operators involved in accidents involving death or serious bodily injury where there is probable cause to believe the driver or boat operator is under the influence. (Current law states that if the officer has probable cause to believe that such persons who caused the incident were under the influence, the officer can require a blood test.) The CS would also provide that this testing need not be incidental to a lawful arrest.

The law enforcement officer would also be required to offer any person subject to a blood test (except to a person the officer has probable cause to believe was under the influence of drugs) the opportunity to submit to a breath test, if the person is conscious and capable of submitting to the breath test. If the person submits to a breath test and a valid reading is obtained, the blood test would be waived.

Finally, the CS would rank the offense of BUI manslaughter when the offender fails to stop and render aid or give information in the offense severity ranking chart in the same manner as the corresponding DUI offense. It would also require that a court cost of \$135 be imposed for BUI convictions, just as it is for DUI convictions.

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:

This CS would increase the penalty from a misdemeanor to a third degree felony for a third DUI or BUI conviction that occurs within 10 years of a prior DUI or BUI conviction. Violators would be subject to a fine ranging from \$1,000 to \$5,000, and a term of imprisonment not to exceed 5 years.

C. Government Sector Impact:

The Criminal Justice Estimating Conference (CJEC) has not released a prison bed impact on this CS. However, last year, the CJEC estimated that a similar bill, CS/SB 716, would

result in 441 additional prison beds, with an estimated cost of \$35,993,119 over a 5-year period.

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.
