

# 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/CS/SB 1024

SPONSOR: Governmental Oversight and Productivity Committee, Criminal Justice Committee and Senator Burt

SUBJECT: Driving or Boating Under the Influence

DATE: March 5, 2002                      REVISED: \_\_\_\_\_

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

## I. Summary:

The Committee Substitute for Committee Substitute for SB 1024 revises the law pertaining to 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). The bill:

- Requires the court to order the placement of an ignition interlock device on an offender’s vehicle when he or she is convicted of a second or third DUI.
- Provides that any person who commits a third DUI or BUI within 10 years after any prior DUI or BUI conviction is guilty of a third degree felony.
- Provides that it is a misdemeanor to refuse to a lawful test of a person’s breath or urine under specified circumstances.
- Requires law enforcement officers to order blood tests under specified circumstances.
- Provides that Felony DUI and Felony BUI are ranked as a Level 3 on the Offense Severity Chart.
- Provides that BUI manslaughter when the offender fails to stop and render aid or give information is a Level 9 on the Offense Severity Chart.
- Provides that court costs of \$135 apply to BUI convictions.
- Requires the Florida Department of Law Enforcement to adopt rules and forms for DUI arrests.

This bill amends the following sections of the Florida Statutes: 316.193, 316.1932, 316.1933, 316.1937, 327.35, 327.352, 327.353, 921.0022, 938.07, and 943.05. This bill creates the following new sections of the Florida Statutes: 316.1939 and 327.359.

## 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 if 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 offense 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. These penalties require 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 offense 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. These penalties require a fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months.

A fourth or subsequent DUI conviction is 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:**

**Section 1.** The bill amends s. 316.193, F.S., to require the court to order the placement of an interlock device on all vehicles either individually or jointly leased or owned by a person who is convicted of a second or third DUI when the person qualifies for a permanent or restricted driver's license. The interlock device must be approved by the Department of Highway Safety and Motor Vehicles, and must be paid for by the convicted person.

The bill increases the penalty for a third DUI offense that occurs within 10 years after a prior DUI conviction to a third degree felony.<sup>1</sup> A third DUI offense that occurs more than 10 years after a prior DUI conviction remains punishable, under the bill as it is in current law, by a fine of not less than \$1,000 and not more than \$2,500, and by imprisonment for not more than 12 months.

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<sup>1</sup> A fourth or subsequent DUI conviction would remain a third degree felony under the bill.

The bill amends current law's enhanced penalties in s. 316.193(3), F.S., for a person who commits DUI, and as of doing such *causes* damage to property or person, serious bodily injury, or death. Under the bill, the enhanced penalties applicable to these circumstances also apply when the person *contributes to the cause* of damage to property or person, serious bodily injury, or death.

**Section 2.** The bill amends s. 316.1932, F.S., to provide that it is a misdemeanor for a person who refuses to submit to a lawful test of his or her own breath or urine, or both and: (a) who has had one or more DUI convictions; or (b) whose driving privilege is suspended for refusal to submit to a lawful test of his or her breath or urine, or both. Further, the bill provides that a blood test may be administered notwithstanding whether the person has been told of the misdemeanor created by the bill, but that a person who is capable of refusal shall be told that his or her refusal to submit to a blood test shall be told of the misdemeanor created by the bill.

**Section 3.** The bill amends s. 316.1933, F.S., to require a law enforcement officer to order blood testing of all drivers involved in accidents involving death or serious bodily injury where there is probable cause to believe the driver is under the influence. Current law permits, but does not require, an officer to order a blood test under these circumstances. Further, the bill provides that this testing need not be incidental to a lawful arrest.

**Section 4.** The bill amends s. 316.1937, F.S., relating to ignition interlock devices, to specify that ignition interlock devices shall be ordered by the court as provided in s. 316.193(2), F.S., and to provide that the court may authorize all or a portion of the fine imposed for a DUI violation to be used to pay for the device.

**Section 5.** The bill creates s. 316.1939, F.S., to provide for a misdemeanor offense of refusal to submit to testing. Under the bill, it is a misdemeanor for any person to refuse to submit to a test of his or her breath, blood, or urine, where: (a) the arresting officer had probable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence; (b) the person was placed under lawful arrest for DUI, unless the test was requested pursuant to s. 316.1932(1)(c), F.S.; (c) the person was informed that if he or she refused to submit to such test that his or her privilege to drive would be suspended for one year or, in the case of a second or subsequent refusal, for 18 months; (d) the person has one or more DUI convictions or the person's driving privilege is suspended for refusal to submit to breath or urine testing, and the person was informed that refusal is a misdemeanor; and (e) the person, after being so informed, refuses to submit to the test.

The bill further provides that a person convicted of DUI or of a misdemeanor for refusal to submit to testing is eligible to participate in any drug court in the circuit.

**Section 6.** The bill amends s. 327.35, F.S., to increase the penalty for a third BUI offense that occurs within 10 years after a prior BUI conviction to a third degree felony.<sup>2</sup> A third BUI offense that occurs more than 10 years after a prior BUI conviction remains punishable, under the bill as it is in current law, by a fine of not less than \$1,000 and not more than \$2,500, and by imprisonment for not more than 12 months.

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<sup>2</sup> A fourth or subsequent BUI conviction would remain a third degree felony under the bill.

The bill amends current law's enhanced penalties in s. 327.35(3), F.S., for a person who commits BUI, and as of doing such *causes* damage to property or person, serious bodily injury, or death. Under the bill, the enhanced penalties applicable to these circumstances also apply when the person *contributes to the cause* of damage to property or person, serious bodily injury, or death.

**Section 7.** The bill amends s. 327.352, F.S., to provide that it is a misdemeanor for a person who refuses to submit to a lawful test of his or her own breath or urine, or both and: (a) who has had one or more BUI convictions; or (b) whose driving privilege is suspended for refusal to submit to a lawful test of his or her breath or urine, or both. Further, the bill provides that a person who is capable of refusal shall be told that his or her refusal to submit to a blood test shall be told of the misdemeanor created by the bill.

**Section 8.** The bill amends s. 327.353, F.S., to require a law enforcement officer to order blood testing of all boat operators involved in accidents involving death or serious bodily injury where there is probable cause to believe the boat operator is under the influence. Current law permits, but does not require, an officer to order a blood test under these circumstances. Further, the bill provides that this testing need not be incidental to a lawful arrest.

**Section 9.** The bill creates s. 327.359, F.S., to provide for a misdemeanor offense of refusal to submit to testing. Under the bill, it is a misdemeanor for any person to refuse to submit to a test of his or her breath, blood, or urine, where: (a) the arresting officer had probable cause to believe the person was operating a vessel or in actual physical control of a vessel while under the influence; (b) the person was placed under lawful arrest for BUI, unless the test was requested pursuant to s. 327.352(1)(c), F.S.; (c) the person was informed that if he or she refused to submit to such test that he or she is subject to a \$500 fine and that the refusal is a misdemeanor; (d) the person has one or more BUI convictions or the person has been fined for refusal to submit to breath or urine testing, and the person was informed that refusal is a misdemeanor; (e) and the person, after being so informed, refuses to submit to the test.

The bill further provides that a person convicted of BUI or of a misdemeanor for refusal to submit to testing is eligible to participate in any drug court in the circuit.

**Section 10.** The bill amends s. 921.0022, F.S., to rank a Felony DUI or Felony BUI as Level 3 on the Offense Severity Chart. Further, the bill provides that BUI manslaughter when the offender fails to stop and render aid or give information is ranked as a Level 9 in the Offense Severity Chart, just as DUI manslaughter under the same circumstances is pursuant to current law.

**Section 11.** The bill amends s. 938.07, F.S., to provide that a court cost of \$135 is to be imposed for BUI convictions, as it is for DUI convictions under current law.

**Section 12.** The bill amends s. 943.05, F.S., to provide that the Criminal Justice Information Program within the FDLE shall adopt rules and forms that prescribe uniform arrest or probable cause affidavits and alcohol influence reports to be used by all law enforcement agencies in this state when making DUI arrests under s. 316.193, F.S.

**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:

The bill increases 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; thus, a violator would be subject to a fine ranging from \$1,000 to \$5,000, and a term of imprisonment not to exceed 5 years. The bill also makes refusal to submit to testing under certain circumstances a first-degree misdemeanor; thus, a violator would be subject to a fine up to \$1,000, and term of imprisonment up to one year. Further, the bill requires second or third DUI offenders to pay for the installation of an ignition interlock device, and imposes court costs of \$135 for BUI offenders.

## C. Government Sector Impact:

The Criminal Justice Estimating Conference (CJEC) has not released a prison bed impact on this bill. 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.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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