

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
FINAL ANALYSIS**

BILL #: CS/CS/HB 1057, 3RD ENG.

RELATING TO: Driving & Boating Under Influence

SPONSOR(S): Council for Healthy Communities; Committee on Crime Prevention, Corrections & Safety and Representative Simmons

TIED BILL(S): None

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 1
 - (2) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
 - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 16 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

CS/CS/HB 1057 amends various statutes relating to driving under the influence (DUI) and boating under the influence (BUI) as follows:

- A fourth DUI or BUI conviction is currently a third degree felony. CS/CS/HB 1057 makes a third conviction for DUI or BUI, which occurs within ten years of a prior conviction, a third degree felony.
- The council substitute also requires that an ignition interlock device be installed in vehicles of persons convicted of a second DUI. The device must be installed for at one year after a second conviction and for at least two years for a third DUI conviction. With an ignition interlock device, a vehicle will not start if the operator's blood alcohol level is in excess of 0.05 percent.
- The council substitute makes the refusal to submit to a breath or blood alcohol test a first degree misdemeanor if the offender's driver's license has previously been suspended for a refusal to submit.

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:

The council substitute creates enhanced penalties for DUI and BUI and creates a criminal penalty for refusal to submit to a blood or breath alcohol test after a license suspension for a prior refusal. Additionally, the council substitute requires that an "interlock device" be placed on an offender's vehicle after a second DUI conviction. These provisions may be seen as creating more government and lessening individual freedom

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:

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

s. 316.193(1), F.S.

A first, second and third DUI are punishable by a jail sentence and a fine as indicated below. A fourth or subsequent conviction for DUI is a third degree felony, punishable by up to five years in prison.

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 (3rd Degree felony)	5 years in prison	5 years prison	\$1,000-\$5,000	\$1,000-\$5,000

s. 316.193(2), F.S.

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.

A prior conviction for boating under the influence (BUI) is considered the equivalent of a prior conviction for DUI for purposes of sentencing an offender for a subsequent DUI. s. 316,193(6), F.S.

Section 316.193, F.S. also provides penalties for a person who operates a vehicle while under the influence and “who, by reason of such operation, causes”:

- damage to the property or person of another;
- serious bodily injury to another; or
- the death of another (DUI manslaughter)

The standard jury instruction for DUI manslaughter indicates that the state must prove that a DUI offender “caused or contributed to the cause” of the death. In State v. Hubbard, 751 So. 2d 552, 566-568 (Fla. 1999), Justice Anstead criticized the jury instruction, arguing that the statute did not contain the language “contributed to the cause”.

Interlock Devices

Section 316.1937, F.S., allows a judge to require that:

[a]ny person who is convicted of driving under the influence in violation of s. 316.193, and who is granted probation, shall not operate a motor vehicle during the period of probation unless that vehicle is equipped with a functioning interlock device certified by the [Department of Highway Safety and Motor Vehicles]....and installed in such a manner that the **vehicle will not start if the operator’s blood alcohol level is in excess of 0.05 percent** or as otherwise specified by the court.

Section 316.1938 requires the Department of Highway Safety & Motor Vehicles to certify the accuracy and precision of ignition interlock devices.

Boating Under the Influence

The fines and maximum jail sentences for boating under the influence are the same as those for DUI which are specified in the chart above. s. 327.35, F.S. A fourth conviction for BUI is also a third degree felony, punishable by up to five years in prison. However, unlike a fourth DUI conviction, which is ranked in level 6 of the offense severity ranking chart of the Criminal Punishment Code, a fourth BUI conviction is not ranked and therefore defaults to a level 1 offense. s. 921.0022, F.S. The offenses of BUI with serious injury and BUI manslaughter are treated in the same manner as the corresponding DUI offenses.

Implied Consent

Section 316.1932, F.S., provides that:

Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her

consent to submit to an approved chemical test or physical test including but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath, and to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages, chemical substances or controlled substances.

The breath or urine test must be incidental to a lawful arrest at the request of a law enforcement officer who has reasonable cause to believe the offender was driving under the influence. The offender must be told that the failure to submit to any lawful test will result in the suspension of the offender's driver's license. An offender's license must be suspended for a year for a first refusal and for eighteen months if the offender's license has previously been suspended for refusal to submit to a breath, blood or urine test. s. 322.2615, F.S. The refusal to submit to the test is admissible into evidence in any criminal proceeding.¹

A person is deemed to have given his or her consent to a blood test even if the person has not yet been arrested, if there is reasonable cause to believe the person was driving under the influence, if the person appears for treatment at a medical facility and if the administration of a breath or urine test is impractical or impossible. s. 316.1932(1)(c), F.S. If a law enforcement officer has probable cause to believe that a person who was driving under the influence has caused the death or serious bodily injury² of a human being, the person must submit to a blood test conducted by a medical professional or technician. If necessary, reasonable force may be used to require the offender to submit to the performance of the blood test. s. 316.1933, F.S. These provisions also apply to an arrest for boating under the influence. ss. 327.352 and 327.353, F.S. The refusal to submit to the lawful breath, urine or blood test is punishable by a civil penalty of \$500.

Fines

Section 938.07, F.S. imposes an additional court cost of \$135 on any person convicted of DUI. The fund is distributed as follows: \$25 to the Emergency Medical Services Trust Fund; \$50 to the Criminal Justice Standards and Training Trust Fund of the Department of Law Enforcement and \$60 to the Brain and Spinal Cord Injury Rehabilitation Trust Fund.³

C. EFFECT OF PROPOSED CHANGES:

Driving Under the Influence

Currently, a fourth or subsequent DUI is a third degree felony. The council substitute makes a third or subsequent DUI offense that occurs within 10 years after a prior DUI conviction a third degree felony. A third DUI that occurs more than ten years after a prior conviction will be treated in the same manner as it is under current law – by imprisonment for up to 12 months. In accordance with current law, a fourth DUI will be treated as a third degree felony, regardless of when it is committed.

The council substitute ranks the offense of felony DUI for a third conviction within ten years of a prior conviction within level 3 of the offense severity ranking chart. The bill does not affect the

¹ The result of any test pursuant to this section which indicates the presence of a controlled substance is not admissible in a trial for the possession of a controlled substance.

² Serious bodily injury is defined 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." Sec. 316.1933(1), F.S.

³ The section provides that effective March 1, 2002, the funds shall be "added to any fine imposed pursuant to s. 316.193" rather than be considered a "court cost". The clerks are required to remand the funds to the Department of Revenue who is required to distribute them in the manner described above.

current ranking for the offense of felony DUI for a fourth or subsequent DUI offense which is currently ranked in level 6 of the offense severity ranking chart.

The council substitute also clarifies that any person who causes or contributes to the cause of property damage or serious bodily injury or the death of another person while committing DUI or BUI can be convicted of those crimes even if he or she is not the sole cause of the accident. This language is consistent with the Standard Jury Instruction relating to DUI manslaughter and addresses Justice Anstead's criticism of the jury instruction in Hubbard, discussed above.

Boating Under the Influence

A fourth conviction for BUI is currently a third degree felony. The bill amends the provisions relating to felony BUI to mirror those for felony DUI discussed above. The offense of felony BUI is currently not ranked within the offense severity ranking chart of the Criminal Punishment Code. As a result, the offense defaults to level one offense. The council substitute ranks the offense of felony BUI within level 3 of the offense severity ranking chart. The council substitute also ranks the offense of BUI manslaughter where 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.

Current law requires the imposition of a \$135 court cost for a DUI conviction. This council substitute requires that this court cost also be imposed for BUI convictions.

Interlock Devices

The council substitute requires that upon a second conviction for DUI, the judge must order the placement, for at least one year, of an ignition interlock device upon all vehicles individually or jointly leased or owned and routinely operated by the offender if the convicted person qualifies for a permanent or restricted license. Upon a third DUI conviction, the ignition interlock device must be installed for at least two years. The ignition interlock device must be of a type approved by the Department of Highway Safety & Motor Vehicles (DHSMV) and must be placed at the offender's sole expense. The installation of such a device may not occur before July 1, 2003.

Further, the bill requires the placement of an ignition interlock device for up to six months for a first DUI offense and for up to two years for a second DUI offense where the person had a blood alcohol level in excess of .20.

DHSMV is directed to adopt rules providing for the implementation of the use of ignition interlock devices.

The current statute relating to ignition interlock devices restricts their use to the vehicles of offenders who have been placed on probation. The council substitute removes this restriction. An offender will be required to periodically report to DHSMV instead of a probation officer in order to verify operation of the device

Implied Consent

As discussed above, under current law, if an offender refuses to submit to a breath, blood or urine test after an arrest for DUI, the offender's driver's license is suspended. The refusal to submit is not a criminal offense.

The council substitute creates a new section of statute which makes the refusal to submit to a breath, blood or urine test a misdemeanor offense *if the offender's driver's license has previously been suspended for a prior refusal to submit*. Specifically, the council substitute provides that a person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine

as described in s. 316.1932, F.S., and whose driving privilege was previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine or blood:

1. Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances.
2. Who was placed under lawful arrest for a violation of s. 316.193, unless such test was requested pursuant to s. 316.1932(1)(c)⁴.
3. Who was informed that if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months, and that the refusal to submit to such test is a misdemeanor.
4. Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a first degree misdemeanor, punishable by up to one year in jail.

The council substitute also provides that the disposition of a criminal action under the newly created section does not affect any administrative proceeding that relates to the suspension of a person's driving privilege.

Section 316.1933, F.S., currently requires a person to submit to a blood test, upon request of a law enforcement officer, when a law enforcement officer has probable cause to believe the person was driving under the influence and caused death or serious bodily injury. The council substitute amends this section to require the officer to order a blood test if there is probable cause and provides that the testing required by this paragraph need not be incidental to a lawful arrest of the person.

This bill also applies the provisions which criminalize the refusal to submit to a breathalyzer test and require a blood test in DUI cases involving death or serious bodily to the BUI statutes.

The bill requires the Criminal Justice Information Program, within the Department of Law Enforcement, to adopt rules and forms prescribing uniform arrest or probable cause affidavits and alcohol influence reports which will be used by all law enforcement agencies making DUI arrests. The rules and forms must be adopted and implemented by July 1, 2004.

This bill takes effect July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

⁴ s. 316.1932(1)(c) applies in cases in which there is reasonable cause to believe that the person was driving which under the influence and the person appears for treatment at a hospital, clinic or other medical facility and the administration of a breath or urine test is impractical or impossible.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

An indeterminate amount of revenue will be generated due to the number of increased fines imposed by courts associated with DUI and BUI prosecutions.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

An indeterminate amount of revenue will be generated due to the number of increased fines imposed by the courts associated with DUI and BUI prosecutions.

2. Expenditures:

This council substitute creates a new criminal offense for refusal to submit to blood alcohol testing after the offender's license has been suspended for a prior refusal. The penalty for this offense is a first degree misdemeanor, punishable by up to one year in county jail. This provision will likely have an indeterminate impact on local county jail populations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The council substitute will have a fiscal impact on person's convicted of a felony for a third or subsequent DUI within ten years of a prior DUI. The council substitute requires a judge to order that an interlock device be placed on the vehicle of a person convicted of a second DUI. The council substitute requires the offender to pay the costs associated with the device.

D. FISCAL COMMENTS:

The bill appropriates the sum of \$216,062 fiscal year 2002-2003 from recurring general revenue to the Department of Corrections "to be used for the purpose of implementing this act."

According to a bill analysis provided by the Department of Highway Safety & Motor Vehicles, this bill will require contracted programming to the Driver Licenses Software System at a cost of \$20,250 to implement. The Criminal Justice Impact Conference has determined that the prison bed impact of CS/HB 1057 will be as follows:

Fiscal Year	Projected Additional Cumulative Prison Beds Required Under CS/SB1024	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2002-2003	23	23	\$216,062	\$1,465,296	\$1,681,358	\$1,681,358
2003-2004	56	33	\$754,924	\$692,042	\$1,446,966	\$3,128,324
2004-2005	82	26	\$1,344,120	\$759,640	\$2,103,760	\$5,232,084
2005-2006	110	28	\$1,912,512	\$332,952	\$2,245,464	\$7,477,548
2006-2007	122	12	\$2,370,344	\$142,295	\$2,512,639	\$9,990,187
Total	122	122	\$6,597,962	\$3,392,225	\$9,990,187	\$9,990,187

Prepared by: Florida Legislature, Office of Economic and Demographic Research

III. 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.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The United States Supreme Court has held that requiring someone to submit to breath or blood testing in DUI cases does not violate the Fourth Amendment's prohibition against unreasonable searches and seizures or the Fifth Amendment right against self-incrimination. See Schmerber v. California, 384 U.S. 757 (1966).

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee/Council Amendments

Original bill: The original bill made a third DUI or BUI conviction a third degree felony; contained a provision allowing an arresting officer to place a person in protective custody under specified circumstances; made a refusal to submit to a breath, blood or alcohol test a misdemeanor and provided additional criteria for a court to use in determining whether involuntary assessment and stabilization or involuntary treatment are required.

Committee on Crime Prevention, Corrections & Safety: The Committee on Crime Prevention, Corrections & Safety adopted four amendments to the bill and the bill as amended was made a committee substitute. The amendments contained provisions not in the original bill: 1) requiring the installation of an interlock device after a second DUI if the convicted person qualifies for a restricted license and; 2) requiring forfeiture of a motor vehicle after a third DUI conviction.

Committee on Judicial Oversight: The Committee on Judicial Oversight reported the committee substitute favorably on February 21, 2002.

Council for Healthy Communities: The Council for Healthy Communities adopted a strike everything which changed the committee substitute in several ways. The amendment provided the following:

- The committee substitute required a judge to order the placement of an “interlock device” for not less than 2 years on the vehicle of a person convicted of a second DUI offense. The amendment to the committee substitute provided that if a person has been convicted of a second DUI and *qualifies for a restricted license pursuant to s. 322.271(2)(a)*, the judge must require that an ignition interlock device be placed on all vehicles owned individually or jointly and routinely operated by the convicted person for a period of two years. The Department of Highway Safety & Motor Vehicles can grant a restricted license to a person who has had their license suspended or revoked if the person is able to show that the suspension will cause a “serious hardship”. The amendment also added language to the existing interlock device statute (s. 316.1937, F.S.) to require the devices to be placed in accordance with the newly created provision.
- The amendment removed the provision of the committee substitute that required that a vehicle used in a third DUI be forfeited *to the state* and provides that the forfeiture be in accordance with the Florida Contraband Forfeiture Act. The Florida Contraband Forfeiture Act allows property to be forfeited to the entity who seized the property and the amendment will conform forfeiture in DUI cases to this provision.
- The amendment removed a provision of the committee substitute that would have required a law enforcement officer to offer a person required to submit a blood test when an officer has probable cause to believe the person was driving under the influence and caused death or serious bodily injury the opportunity to submit instead to a breath test.

The committee substitute with the strike everything amendment was made a council substitute for the committee substitute.

Floor Amendments

Second Reading in House of Representatives: On second reading in the House, a strike-everything amendment was adopted which provided the following:

- The council substitute required placement of an interlock device only when the offender qualified for a restricted license. The amendment altered this language to instead require "immediate mandatory placement of an ignition interlock device" upon a second DUI conviction. The amendment also required the placement of an interlock device for two years upon a third DUI conviction. (The council substitute did not require placement of an interlock device upon a third DUI conviction)
- The amendment removed the provisions requiring the forfeiture of a motor vehicle upon a third DUI conviction and the provision amending the Florida Contraband Forfeiture Act.
- The amendment modified the existing ignition interlock device statute to remove language that made the statute only applicable to offenders who are on probation. The amendment also required that the offender offer proof of installation and report periodically for verification of the operation of the device to DHSMV instead of the offender's probation officer.
- The amendment also placed the offense of felony DUI upon a third conviction in level 3 of the offense severity ranking chart instead of in level 6.

The council substitute, as amended became CS/CS HB 1057, 1st Engrossed.

Third Reading in House of Representatives: On third reading in the House, a strike everything amendment as well as an amendment to the strike everything amendment was adopted. The strike everything amendment as amended provided the following:

- The amendment required the placement of an interlock device for at least one year for a second DUI (instead of two years) and for at least two years for a third conviction. The amendment also required placement of the device on a vehicle *leased* and routinely operated by the offender. The amendment also provides that the interlock device must be placed when the convicted person *qualifies for a permanent or restricted license* and provided that the installation of such a device may not occur before July 1, 2003. The amendment also required that the device be placed at the offender's sole expense. The amendment also applied the interlock device requirements to a DUI offense where the offender's blood alcohol level was in excess of .20 by requiring the placement of an interlock device for up to six months for a first offense and for at least two years for a second offense.
- The first engrossed version of the council substitute made a third DUI a third degree felony. The amendment made *a DUI offense that occurs within 10 years after a prior conviction* a third degree felony.
- The amendment removed the language in the first engrossed version of the council substitute relating to placing an offender in protective custody.
- The first engrossed version of the council substitute made a refusal to submit to a breath, blood or urine test a first degree misdemeanor. The amendment makes the refusal to submit a misdemeanor *if the offender's driver's license has previously been suspended for a prior refusal to submit.*
- The amendment added language requiring the Criminal Justice Information Program, within the Department of Law Enforcement, to adopt rules and forms prescribing uniform arrest or probable cause affidavits and alcohol influence reports which will be used by all law enforcement agencies making DUI arrests. The rules and forms must be adopted and implemented by July 1, 2004.

Senate Amendments: The council substitute passed the House of Representatives on March 18, 2002. On second reading, the Senate substituted CS/CS/HB 1057, 2nd Eng. for CS/CS/CS/SB 1024 and adopted a strike everything amendment (containing the substance of the Senate bill). The amendment made technical changes to the provision relating to a refusal submit to a breath, blood or urine test. The amendment also removed language from the bill relating to involuntary admissions for treatment.

The House concurred in the Senate amendment on March 21, 2002. The bill was signed by the Governor on May 15, 2002.

VI. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

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AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

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AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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