

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1311 w/CS Driving Under the Influence
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 2762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Highway Safety (Sub)	9 Y, 0 N	Garner	Miller
2) Transportation	19 Y, 0 N w/CS	Garner	Miller
3) Public Safety & Crime Prevention		Kramer	De La Paz
4)			
5)			

SUMMARY ANALYSIS

The severity of punishment for conviction of Driving Under the Influence (DUI) is dependent on the number of prior convictions on the defendant's record. The state learns of prior convictions through criminal history background investigations. According to proponents of the bill, the complete results of these background investigations sometimes take more than 60 days. Under Florida's speedy trial requirements, a defendant making a demand for speedy trial must be brought to trial within 60 days of making the demand. If a criminal history background investigation is not complete within that time period, the defendant may avoid punishment required or authorized by law based on the number of prior convictions for DUI or similar offenses. Proponents also assert that court records may be expunged after a period of time, eliminating prior convictions from those records.

HB 1311 w/CS authorizes the use of records of DHSMV as evidence to establish previous convictions for DUI or similar offenses, and provides that the records are sufficient by themselves to establish prior convictions. The evidence may be contradicted or rebutted by other evidence, and considered with other evidence by a finder of fact during the sentencing phase of a trial in deciding if the defendant has been previously convicted.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: April 8, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The severity of punishment for conviction of Driving Under the Influence (DUI) is dependent on the number of prior convictions on the defendant's record. For example:

- For a first conviction, the convicted person will be placed on probation for up to 1 year, may be incarcerated for up to six months, and must perform at least 50 hours of community service. In addition, the person's vehicle must be impounded or immobilized for 10 days. The person is also subject to a fine of \$250-\$500.¹
- For a second conviction occurring within 5 years after the previous conviction, the convicted person will be confined for at least 10 days, may be incarcerated for up to nine months, may be placed on probation, and as a condition the person's vehicle must be impounded or immobilized for 30 days. The person is also subject to a fine of \$500-\$1,000 and a 1-year mandatory placement of an ignition interlock device, regardless of the time period between the second and prior conviction.
- For a third conviction occurring later than 10 years after the date of the prior conviction, the convicted person will be confined for at least 30 days, but no more than 12 months, may be placed on probation, and as a condition the person's vehicle must be impounded or immobilized for 90 days. In addition, the person will be fined \$1,000-\$2,500 and subject to a 2-year mandatory placement of an ignition interlock device.
- For a third conviction occurring within 10 years after the date of a prior conviction, the convicted person is guilty of a third-degree felony, will be confined for at least 30 days, may be imprisoned for up to 5 years, may be subject to a fine of up to \$5,000, and may be placed on probation. As a condition of probation, the person's vehicle must be impounded or immobilized for 90 days. In addition, the person is subject to a 2-year mandatory placement of an ignition interlock device.
- For a fourth or subsequent conviction, the convicted person is guilty of a third-degree felony, will be confined for at least 30 days, may be imprisoned for up to 5 years, will be subject to a fine of \$1,000 to \$5,000, and may be placed on probation. As a condition of probation, the person's vehicle must be impounded or immobilized for 90 days, and the person's driver's license will be permanently revoked.

Persons convicted of DUI are also subject to driver's license suspensions and being required to attend alcohol treatment programs. Enhanced penalties and escalated charges apply if the blood or breath-

¹ See generally, s. 316.193, F.S.

alcohol content level is at or above 0.20 or if property damage, injury or death occur as a result of a DUI related crash.

Prior convictions include convictions for Boating Under the Influence (BUI), convictions under prior Florida DUI or BUI statutes or for previous convictions out of state under similar laws.² The state learns of prior out of state convictions through criminal history background investigations. According to proponents of the bill, the results of these background investigations sometimes take more than the amount of time in which a defendant must be brought to trial under speedy trial rules.

Rule 3.191(b) of the Florida Rules of Criminal Procedure authorizes a defendant to demand a trial within 60 days of indictment or the filing of an information by filing a "Demand for Speedy Trial". If the defendant is not brought to trial within 50 days of the filing of the demand, the defendant may then file a "Notice of Expiration of Speedy Trial Time". No later than five days from the date of this notice, the judge must conduct a hearing and unless the judge finds that a reason set forth by the rule exists, must order that the defendant be brought to trial within 10 days. If the defendant is not brought to trial within 10 days through no fault of the defendant, upon motion of the defendant or the judge, the defendant must be forever discharged from the crime.³

If a criminal history background investigation is not completed within the required time period, the defendant may avoid punishment required or authorized by law based on the number of prior convictions for DUI or other offenses of the same class, such as Boating Under the Influence or a comparable offense from another jurisdiction. Proponents also assert that court records may be expunged after a period of time, eliminating prior convictions from those records.

Section 322.201, F.S. provides that a driving record of an individual certified by machine imprint of the Department of Highway Safety & Motor Vehicles (DHSMV) or the clerk of the court shall be received as evidence in all courts of the state without further authentication unless there is a genuine issue as to the authenticity of the information.

Effect of Proposed Changes

HB 1311 w/CS authorizes the use of records of DHSMV as evidence to establish previous convictions for DUI or similar offenses, and provides that the records are sufficient by themselves to establish prior convictions. The evidence may be contradicted or rebutted by other evidence, and considered with other evidence by a finder of fact during the sentencing phase of a trial in deciding if the defendant has been previously convicted.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S., authorizing the use of records of DHSMV to prove previous convictions for DUI.

Section 2. Provides that the bill shall take effect upon becoming law.

² s. 316.193(6), F.S.

³: Florida Rule of Criminal Procedure 3.191(a) provides for speedy trial without demand. The rule requires that every person charged with a crime by indictment or information be brought to trial within 90 days if the crime charged is a misdemeanor, or within 175 days if the crime charged is a felony. The time periods established begin when the defendant is taken into custody. If a trial is not begun within the appropriate time period, the defendant may file a "Notice of Expiration of Speedy Trial Time". No later than five days from the date of this notice, the judge must conduct a hearing and unless the judge finds that a reason set forth by the rule exists, must order that the defendant be brought to trial within 10 days. If the defendant is not brought to trial within 10 days through no fault of the defendant, upon motion of the defendant or the judge, the defendant shall be forever discharged from the crime.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the provisions of the bill, some defendants who would otherwise avoid greater punishment because of the inability of the court to consider prior convictions may not be able to avoid such punishment, which may include higher fines, longer periods of incarceration, longer periods of probation, and stiffer administrative penalties such as a driver's license suspension or revocation or imposition of an ignition interlock device.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Opponents of the bill raise a number of legal questions concerning the constitutionality of the bill. Primarily, because proof of prior convictions for misdemeanor DUI is an element of felony DUI, they assert that the bill relieves the state of its burden in proving every element of felony DUI offenses beyond a reasonable doubt, as required by the United States Constitution's due process guarantees. Proponents argue that the bill would merely allow the state to offer evidence that is sufficient to raise a rebuttable presumption that shifts the burden of producing additional evidence, and does not unconstitutionally shift the state's burden of proof to the defendant.

Generally, due process guarantees forbid laws that create mandatory presumptions requiring jurors to infer presumed facts from facts offered into evidence by the state. On the other hand, the courts have upheld permissive inferences which allow, but do not require, jurors to infer presumed facts from evidence offered by the state. In determining which kind of presumption has been created by a

statute, the courts traditionally have examined the presumption to determine the extent to which the evidentiary and presumed facts coincide. The test has been whether the presumed facts more likely than not flow from the facts offered into evidence. State v. Brake, 796 So.2d 592 (Fla. 2001).

In this case, in determining whether the provisions of the bill create a mandatory or permissive inference, a court would likely evaluate whether a prior DUI conviction is more likely than not to exist based on DHSMV records indicating that a person with the same name, address, and social security number, etc. as the defendant has a prior DUI conviction. However, it is impossible to determine based on a generalized statement of the law, without knowledge of the facts in a particular case, how a court may decide with respect to the constitutionality of the presumption created by this bill.

In addition, opponents assert that a driving record of DHSMV is probative for proving that a prior conviction exists, but is insufficient evidence to link the defendant to the conviction cited in the record. In State v. Pelicane, 729 So.2d 534 (Fla. 3rd DCA 1999), the state introduced an certified copy of the defendant's driving record as proof of the defendant's prior DUI convictions. The Third District Court of Appeal overturned the conviction and held that the computerized driving record was "too unreliable" to prove the prior convictions beyond a reasonable doubt. The Fourth District Court of Appeal has held that the state cannot prove a defendant's prior DUI offenses using only copies of driving records. Jackson v. State, 788 So.2d. 373 (Fla. 4th DCA 2001). In a subsequent case, the 4th DCA indicated that a certified copy of a defendant's prior conviction is not the only way to prove prior convictions. The court held that the evidence was sufficient to prove the defendant's prior DUI conviction where the state introduced the defendant's driving record as well as evidence of the court file in an earlier DUI case, which contained a booking photograph which resembled the defendant, a probable cause affidavit which indicated that the arrestee shared the defendant's physical description and birth date and other relevant documents. In a later case, the same DCA stated:

[W]e wish to make clear that the safest course is for the state to adduce certified copies of the prior qualifying convictions. Relying on the sufficiency of other evidence to prove qualifying convictions for felony driving offenses needlessly runs the risk of a reversal. It is much the best for the state to adduce its own official records, the certified copies of the convictions themselves

Williams v. State 865 So.2d 5, 6 (Fla. 4th DCA 2003).

In Arthur v. State, 818 So.2d 589 (Fla. 5th DCA 2002), the Fifth District Court of Appeal court held that a defendant's driving record could be used to prove that the defendant had been designated an habitual traffic offender and had his license revoked. The court stated:

We believe that the convictions appearing in the records maintained by the Department, records obtained from the courts as part of the Department's business records (records not disputed by defendant when he was notified that his license had been suspended) are sufficiently linked to defendant to constitute prima facie evidence that defendant committed the offense reflecting his driver's license and shifts the burden of going forward with the evidence to defendant. Unrefuted, the records are sufficient to sustain a conviction.

See also, Littman v. State, 2004 WL 726827 (Fla. 1st DCA April 6, 2004)(holding that DHSMV could rely on computer printout of petitioner's out-of-state driving record to prove by a preponderance of the evidence that the petitioner had been convicted of prior DUIs for purpose of revoking petitioner's license).

The Florida Supreme Court has not considered the issue of whether certified driving records of DHSMV are adequate evidence to link a defendant to the convictions cited in the records.

B. RULE-MAKING AUTHORITY:

No exercise of rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 24, 2004, the Highway Safety Subcommittee recommended one strike-everything amendment that provides that records of DHSMV are sufficient by themselves to establish a presumption that a defendant has prior DUI convictions, provides that the presumption may be rebutted, and provides that the records may be considered with other evidence. The subcommittee then reported the bill favorably as amended.

On March 30, 2004, the Committee on Transportation adopted the amendment recommended by the Highway Safety Subcommittee and then reported the bill favorably with a committee substitute.