

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: SB 1322

SPONSOR: Senator Lynn

SUBJECT: Fleeing Law Enforcement Officer

DATE: March 4, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1322 increases penalties for offenses relating to fleeing or attempting to elude a law enforcement officer.

Unlike current law, the bill would allow a person to be charged with willfully fleeing or eluding a law enforcement officer in a patrol vehicle *with or without* agency insignia and other jurisdictional markings prominently displayed on the vehicle with its siren and lights activated.

The bill provides that it is an affirmative defense to a prosecution in cases where the patrol vehicle was unmarked, that the person proceeded in a safe and lawful manner to a well-lit or populated area prior to stopping his or her vehicle. However, this affirmative defense would not apply in cases in which the offender drove at a high speed in fleeing the unmarked patrol vehicle.

The bill makes it a first degree felony with a three-year minimum mandatory term of imprisonment if, during the course of fleeing or attempting to elude, the offender drives at high speed or in any manner which demonstrates a wanton disregard for the safety of persons or property and causes serious bodily injury or death to another person, or if, during the course of leaving the scene of an accident, the offender flees or attempts to elude an officer and causes serious bodily injury or death.

The bill requires a judge to order the suspension of an offender's driver's license for not less than one year or more than five years, an expansion of the period authorized by current law. Further, the bill prohibits a judge from withholding adjudication of guilty for a violation of this section.

This bill substantially amends ss. 316.1935 and 921.0022, F.S., and reenacts ss. 318.17(1) and 322.61(1), F.S.

II. Present Situation:

Section 316.1935(1), F.S., provides that it is a first degree misdemeanor for the operator of a vehicle, having knowledge that he or she has been ordered to stop such vehicle by a duly authorized law enforcement officer, to willfully refuse or fail to stop, or having stopped in compliance with the order, willfully to flee in attempt to elude the officer.

Section 316.1935(2), F.S., provides that it is a third degree felony to willfully flee or attempt to elude a law enforcement officer in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated. This offense is a Level 3 offense.

Section 316.1935(3), F.S., provides that it is a second degree felony to willfully flee or attempt to elude a law enforcement officer in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated, if during the course of the fleeing or attempted eluding, the offender drives at high speed or in any manner which demonstrates a wanton disregard for the safety of persons or property. This offense is a Level 4 offense.

Section 316.1935(4), F.S., provides that it is a second degree felony for any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash (in violation of s. 316.027, F.S., or s. 316.0611, F.S.), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order and as a result of such fleeing or eluding, causes injury to another person or causes damage to the property of another person. This offense is a Level 5 offense.

Currently, a judge is authorized to revoke an offender's driver's license for up to one year for a violation of s. 316.1935, F.S.

Section 843.18, F.S., which relates to fleeing or eluding a law enforcement officer in a boat, provides that the boat may be seized by a law enforcement officer and is subject to forfeiture.

III. Effect of Proposed Changes:

Senate Bill 1322 amends s. 316.1935(1), F.S., to provide that it is a third degree felony for the operator of a vehicle, having knowledge that he or she has been ordered to stop such vehicle by a duly authorized law enforcement officer, to willfully refuse or fail to stop, or having stopped in compliance with the order, willfully to flee in an attempt to elude the officer. Currently, this offense is a first degree misdemeanor. The bill amends s. 921.0022, F.S., the Criminal Punishment Code ranking chart, to rank the offense as a Level 1 offense.

The bill also amends s. 316.1935(2), F.S., which currently provides that it is a third degree felony to willfully flee or attempt to elude a law enforcement officer in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated. The amendment makes the offense applicable to willfully fleeing or eluding the patrol vehicle *with or without* agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated.

Therefore, a driver could be charged with willfully fleeing or eluding an officer in an unmarked patrol vehicle if the vehicle had its sirens and lights activated.

The bill provides that it is an affirmative defense to a prosecution under s. 316.1935(2), F.S., that a person, having been ordered to stop his or her vehicle by a law enforcement officer in an authorized law enforcement patrol vehicle with lights and sirens activated, but without agency insignia or other jurisdictional markings, proceeded in a safe and lawful manner to a well-lit or populated area prior to stopping his or her vehicle. The bill amends s. 921.0022, F.S., the Criminal Punishment Code ranking chart, to make technical conforming changes to the descriptive reference of the offense in the ranking chart.

The bill also amends s. 316.1935(3), F.S., which provides that it is a second degree felony to willfully flee or attempt to elude a law enforcement officer in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated if during the course of the fleeing or attempted eluding, the offender drives at high speed or in any manner which demonstrates a wanton disregard for the safety of persons or property. The amendment makes the offense applicable to willfully fleeing or eluding the patrol vehicle *with or without* agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated. Subsection (3) is bifurcated into a paragraph (a) and a paragraph (b), and this offense is placed in paragraph (3)(a).

Paragraph (3)(b) contains a new offense: a person commits a first degree felony with a three-year mandatory term of imprisonment, if that person willfully flees or attempts to elude a law enforcement officer in an authorized law enforcement patrol vehicle *with or without* agency insignia and other jurisdictional markings prominently displayed on the vehicle with siren and lights activated and during the course of the fleeing or attempted eluding, drives at a high speed or in any manner which demonstrates a wanton disregard for the safety of persons or property, and causes serious bodily injury or death to another person, including a law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle.

The affirmative defense the bill applies to s. 316.1935(2), F.S., is not applied to s. 316.1935(3)(a) and (b), F.S. Therefore, if a driver traveled at a high speed in fleeing or eluding an officer in an unmarked patrol vehicle, and violated either (3)(a) or (3)(b), he or she could be charged, respectively, with a second degree felony and a first degree felony, but could not use the defense that he or she was proceeding to a well-lit or populated area prior to stopping his or her vehicle.

The bill amends s. 921.0022, F.S., the Criminal Punishment Code ranking chart, to make technical conforming changes to the descriptive reference of the offense in paragraph (3)(a) (currently located in subsection (3)), which is already ranked as a Level 4 offense in the Code ranking chart. The bill also ranks the offense in paragraph (3)(b) in Level 7 of the Code ranking chart.

The bill also amends s. 316.1935(4), F.S., which provides that it is a second degree felony for any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash (in violation of s. 316.027, F.S., or s. 316.0611, F.S.), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with

such an order and as a result of such fleeing or eluding, causes injury to another person or causes damage to the property of another person. Subsection (4) is bifurcated into a paragraph (a) and a paragraph (b), and this offense is placed in paragraph (4)(a).

Paragraph (4)(b) contains a new offense: a person commits a first degree felony with a three-year minimum mandatory term of imprisonment if that person, in the course of unlawfully leaving or attempting to leave the scene of a crash (in violation of s. 316.027, F.S., or s. 316.0611, F.S.), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order and as a result of such fleeing or eluding, causes serious bodily injury or death to another person, including a law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle.

The bill amends s. 921.0022, F.S., the Criminal Punishment Code ranking chart, to make technical conforming changes to the descriptive reference of the offense in paragraph (4)(a) (currently located in subsection (4)), which is already ranked as a Level 5 offense in the Code ranking chart). The bill also ranks the offense in paragraph (4)(b) in Level 8 of the Code ranking chart.

The bill provides that the offenses in s. 316.1935(4)(a) and (b), F.S., are separate offenses for which a person may be charged, in addition to the offenses under ss. 316.027 and 316.061, F.S., relating to unlawfully leaving the scene of a crash which the person had been in the course of committing or attempting to commit when the order to stop was given.

Currently, the court may revoke a person driver's license for a violation of s. 316.1935, F.S., for a period not to exceed one year; under the bill, the period is now not less than one year and not more than five years.

The bill also provides that no court may withhold adjudication of guilt or imposition of sentence for a violation of s. 316.1935, F.S., and the violator who receives the minimum mandatory term is not eligible for statutory gain-time or discretionary early release, other than pardon or executive clemency or conditional medical release, prior to serving the minimum mandatory term. Further, the bill provides that a vehicle used in violation of s. 316.1935, F.S., is deemed to be contraband, which may be seized by a law enforcement agency and is subject to forfeiture pursuant to the Florida Contraband Forfeiture Act. (This is similar to language in s. 843.18, F.S., relating to fleeing or eluding a law enforcement officer in a boat, which provides that the boat may be seized by a law enforcement officer and is subject to forfeiture.) Any vehicle not required to be titled under the laws of this state is presumed to be the property of the person in possession of the vehicle.

The bill also reenacts ss. 318.17(1) and 322.61, F.S., for purpose of incorporating the amendment to s. 316.1935, F.S., by reference.

The act takes effect July 1, 2004, and shall apply to offenses committed on or after that date.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill will have an insignificant prison bed impact.

Department of Corrections' staff reports the following information:

The increase in the degree of the offense of "simple" fleeing from a misdemeanor to a third degree felony may significantly affect supervision admissions. The Department of Highway Safety and Motor Vehicle reported in 2001, that 7,479 drivers were cited for the offense of fleeing in Florida. Although the report is not specific as to the number of these citations that were misdemeanors, based on the number of prosecutions for felony fleeing that resulted in prison or supervision admission, one could surmise that a significant number of the 7,479 were misdemeanors. If a significant portion of the current misdemeanor offenders for this offense are placed on felony supervision, it would require an increase of Correctional Probation Officer FTE's. The number of FTE's cannot be determined until more information is received from DHSMV. More specific information on the number of misdemeanor arrests for fleeing has been requested from the Department of Highway Safety and Motor Vehicles and the analysis will be updated upon receipt.

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.
