

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 295 Fleeing or Attempting to Elude a Law Enforcement Officer
SPONSOR(S): Patterson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	_____	<u>Kramer</u>	<u>De La Paz</u>
2) <u>Public Safety Appropriations (Sub)</u>	_____	_____	_____
3) <u>Appropriations</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 295 provides for enhanced penalties for offenses relating to fleeing or attempting to elude a law enforcement officer. The bill eliminates any misdemeanor designation for the offense and makes it a third degree felony for a driver, having knowledge that he or she has been ordered to stop the vehicle by a law enforcement officer, to willfully refuse or fail to stop the vehicle in compliance with the order, or having stopped the vehicle, willfully to flee in an attempt to elude the officer.

Currently, a driver cannot be charged with the felony offense of willfully fleeing or eluding a law enforcement officer in a patrol vehicle unless the vehicle has agency insignia and other jurisdictional markings prominently displayed and has its siren and lights activated. The bill would allow a driver to be charged with this offense regardless of whether the patrol vehicle had agency insignia and other jurisdictional markings if the vehicle's siren and lights were 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 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. The bill also requires the judge to impose a three year minimum mandatory sentence for this offense. The bill makes it a first degree felony 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. This offense will also require the imposition of a three year minimum mandatory sentence.

Under current law, a judge is authorized to order the suspension of an offender's driver's license for up to one year for the offense of fleeing or attempting to elude an officer. The bill requires a judge to order the suspension of an offender's drivers license for not less than one year or more than five years. Further, the bill prohibits a judge from withholding adjudication of guilty for a violation of this section.

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

STORAGE NAME h0295.ps.doc
DATE January 27, 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

HB 295 amends section 316.1935, F.S. to provide for enhanced penalties for offense related to fleeing or eluding a law enforcement officer under certain circumstances. Currently, section 316.1935(1) 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. HB 295 amends this section to make the offense a third degree felony. As a result of the bill, there will no longer be a misdemeanor offense of fleeing or eluding a law enforcement officer – all of the offenses contained in the section will be a felony.

Section 316.1935(2) 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. HB 295 amends this subsection to provide that the offense applies whether or not the law enforcement vehicle has agency insignia or other jurisdictional markings. As a result, a driver could be charged with 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 this subsection that the 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.

Section 316.1935(3) currently 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 or persons or property. HB 295 expands this provision to apply to patrol vehicles without agency insignia and other jurisdictional markings. The affirmative defense discussed above is not applicable to a prosecution under this subsection. Therefore, if a driver traveled at a high speed in fleeing or eluding an officer in an unmarked patrol vehicle, he or she could be charged with a second degree felony and could not use the defense that they were proceeding to a well-lit or populated area prior to stopping his or her vehicle. The bill also makes it a first degree felony when this offense causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle. The bill requires the imposition of a three year minimum mandatory sentence for the commission of this offense.

Section 316.1935(4) currently 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 or s.

316.061¹), 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. HB 295 makes it a first degree felony when this offense causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle. The bill also requires the imposition of a three year minimum mandatory sentence for the commission of this offense.

Currently, a judge is authorized to revoke an offender's driver's license for up to one year for a violation of section 316.1935. HB 295 requires a judge to revoke an offender's license for not less than one year and not exceeding five years. The bill also provides that no court may withhold adjudication for a violation of this section.

Further, the section provides that a vehicle used in violation of this provision is deemed to be contraband which can 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 section 843.18, 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.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.1935; relating to fleeing or attempting to elude a law enforcement officer.

Section 2. Amends s. 921.0022, F.S.; making corresponding changes to offense severity ranking chart of Criminal Punishment Code.

Section 3. Reenacts s. 318.17(1), F.S. for purpose of incorporating the amendment to section 316.1935, F.S. by reference.

Section 4. Reenacts s. 322.61, F.S. for purpose of incorporating the amendment to section 316.1935, F.S. by reference.

Section 5. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

¹ Section 316.027(1)(b), F.S. provides that a driver of a vehicle involved in a crash resulting in the death of any person must immediately stop the vehicle at or near the scene of the crash, and must remain at the scene until he or she has complied with the requirements of s. 316.062, F.S. listed below. A willful violation of this provision is a second degree felony.

Section 316.061, F.S. provides that a driver of any vehicle involved in a crash resulting in damage to a vehicle or other property must immediately stop the vehicle and remain at the scene until he or she has complied with the requirements of s. 316.062, F.S. listed below. A violation of this provision is a second degree misdemeanor.

Section 316.062, F.S. requires a driver of a vehicle involved in a crash resulting in property damage or injury or death to provide certain information to the person who was injured or whose property was damaged or to law enforcement investigating the crash. The driver must provide his or her name, address, vehicle registration number and driver's license. The driver also must render reasonable assistance to the injured.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill increases the severity of the offense of fleeing a law enforcement officer from a first degree misdemeanor to a third degree felony. The offense will be ranked in level one of the offense severity ranking chart of the Criminal Punishment Code and therefore the permissible sentence for this offense will range from any non-state prison sanction up to a five year maximum sentence. This is likely to have an insignificant prison bed impact on the Department of Corrections.

The bill creates two new first degree felony offenses when fleeing or eluding a law enforcement officer results in serious bodily injury or death, ranks these offenses in level 7 and level 8 of the offense severity ranking chart, depending on the circumstances and requires the imposition of a three year minimum mandatory sentence. According to information provided by the staff of the Office of Economic and Demographic Research, very few of the offenders sentenced in FY 02-03 for the felony fleeing or eluding offenses had victim injury points added to their criminal code score. Therefore, it appears unlikely that a large number of offenders cause serious bodily injury or death during the course of fleeing or eluding and would therefore qualify for the new minimum mandatory sentence. As a result, it is not expected that this bill will have a large prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES