



## 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:

Current law provides for the offense of vehicular homicide. Vehicular homicide is defined in s. 782.071, F.S. as "the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another." Vehicular homicide is a second degree felony.<sup>1</sup> However, when the offense occurs and at the time of the accident the person knew or should have known that the accident occurred, and the person failed to render aid as required by s. 316.062, F.S., the offense is a first degree felony.<sup>2</sup>

Courts have looked to factual circumstances of the case to determine recklessness. For example, in Lewek v. State 752 So.2d 6 (2000), a defendant who had shallow tread on his tires, a missing lug nut, improper window tinting, was traveling 60 in a 45 mile per hour zone, and accelerated through an intersection after the light had been red for five seconds met the elements of recklessness for the offense of vehicular homicide. The test used by the courts has been to determine whether the defendant could have reasonably foreseen that if he knowingly drove his vehicle in such a manner and under the conditions as he did, he was likely to cause death or great bodily harm to another.

HB 521 creates a rebuttable presumption for the offense of vehicular homicide. Under the bill, it is a rebuttable presumption when a person operates a motor vehicle without sleeping in the preceding 24 hours that the person is operating the vehicle in a reckless manner.

#### C. SECTION DIRECTORY:

Section 1. amending s. 782.071, F.S. relating to the offense of vehicular homicide.

Section 2. providing an effective date.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

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<sup>1</sup> Second degree felonies are punishable by 15 years in prison or a \$10,000 fine under s. 775.082 and s. 775.083, F.S.

<sup>2</sup> First degree felonies are punishable by 30 years in prison or a \$10,000 fine under s. 775.082 and s. 775.083, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet evaluated the fiscal impact of this bill.

### 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:

The due process clauses of the United States and Florida Constitutions require the State to prove every element of a criminal offense beyond a reasonable doubt. Burttram v. State, 780 So.2d 224 (Fla 2<sup>nd</sup> DCA 2001). A mandatory rebuttable presumption is impermissible under the Due Process Clause. Tatum v. State, 28 Fla. Weekly D2380 (Fla 2<sup>nd</sup> DCA 2003) Such presumptions are violative of the Due Process Clause if they relieve the State of the burden of persuasion on an element of an offense. Barrett v. State, 28 Fla. Weekly D2237 (Fla 2<sup>nd</sup> DCA 2003). Also, where mandatory rebuttable presumptions require a trier of fact to presume an element of a crime upon proof of a basic or evidentiary fact unless the defendant comes forward with evidence to rebut finding of that element, it violates the defendant's due process rights by relieving the state of its burden of persuasion. Cordova v. State, 675 So.2d 632 (Fla 3<sup>rd</sup> DCA 1996) To the extent that proving that a defendant is operating a motor vehicle and has not slept in the previous 24 hours relieves the State of its obligation to prove that the defendant in a vehicular homicide drove recklessly beyond a reasonable doubt, the statute may be held unconstitutional.

However, it is important to note that while criminal statutory presumptions must be regarded as irrational or arbitrary, and hence unconstitutional under the due process clause, they will be upheld if it can be said with substantial assurance that the presumed fact is more likely to flow from the proved fact on which it is made to depend. State v. Brake, 26 Fla. L. Weekly S608 (Fla. 2001). In other words, if it can be said that a person is more likely to be driving recklessly if he or she is driving and has failed to sleep in the previous 24 hours, then the presumption may survive a constitutional challenge. Courts have also upheld the constitutionality of other statutory presumptions such as is found in the DUI blood alcohol statutes. Frazier v. State, 559 So.2d 1121 (Fla. 1990).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**