

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.)

Prepared By: Judiciary Committee

BILL: SB 116

SPONSOR: Senators Saunders and Lynn

SUBJECT: Culpable Negligence/Vehicles/DUI

DATE: January 25, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides that a person commits culpable negligence, punishable as a first-degree misdemeanor, where he or she exposes another person to personal injury by driving under the influence of alcohol or drugs (DUI) while accompanied by a passenger younger than 18 years of age in the vehicle.

This bill appears to criminalize the same behavior as is addressed in the Driving under the Influence statute (s. 316.193(4), F.S.)

This bill substantially amends section 784.05, Florida Statutes.

II. Present Situation:

Culpable negligence is punishable under s. 784.05, F.S., as either a misdemeanor or felony, as follows:

- Someone who exposes another person to personal injury through culpable negligence commits a second-degree misdemeanor, which is punishable by a fine not exceeding \$500 and imprisonment not exceeding 60 days.¹
- A person who inflicts actual personal injury on another person through culpable negligence commits a first-degree misdemeanor, which is punishable by a fine not exceeding \$1,000 and imprisonment not exceeding one year.²

¹ s. 784.05(1), F.S.

² s. 784.05(2), F.S.

- Culpable negligence is also punishable as a third-degree felony when a person exposes another to personal injury through culpable negligence by storing or leaving a loaded firearm within the reach or easy access of a minor and the minor uses that firearm to inflict injury or death upon himself or herself or another person.³

The purpose of the culpable negligence statute, according to the Florida Supreme Court in *State v. Greene*, is to punish behavior creating an “unreasonably great risk of harm to others.”⁴ The Court defined culpable negligence as conduct showing reckless disregard for human life, or for the safety of other persons, or conduct showing an entire lack of care which raises a presumption of indifference to the consequences.⁵

Under s. 316.193(4), F.S., a person convicted of driving under the influence of alcohol or drugs to the extent his or her normal faculties are impaired (DUI) and who has passengers under 18 years of age in the vehicle at the time of the offense can be punished by a fine of \$500 to \$1,000 and imprisonment of up to 9 months for a first conviction; \$1,000 to \$2,000 and imprisonment of up to 12 months for a second conviction; and a fine not less than \$2,000 for a third conviction.

Under the culpable negligence statute, driving under the influence with passengers less than 18 years of age in the vehicle could most likely be prosecuted as a second-degree misdemeanor, which is a lesser penalty than the current penalty under s. 316.193(4), F.S.

III. Effect of Proposed Changes:

Senate Bill 116 would specify that a person, who through culpable negligence exposes another person to personal injury by driving under the influence of alcohol or drugs while accompanied by a passenger younger than 18 years of age in the vehicle, commits a first-degree misdemeanor under s. 784.05, F.S. Currently, if a prosecutor wants to charge a person with culpable negligence for this same behavior, the penalty is a second-degree misdemeanor. It would also provide a potentially higher imprisonment period than is currently authorized under s. 316.193(4), F.S. (up to one year for a first offender rather than up to nine months for driving under the influence with minor passengers).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³ s. 784.05(3), F.S.

⁴ 384 So.2d 3, 4 (1977).

⁵ *Id.*

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Under this bill, the state may potentially charge a defendant for the same offense under both s. 316.193(4), F.S., and s. 784.05(5), F.S. In practice, however, should a person be prosecuted under both laws, a court may find this constitutionally suspect, based on a challenge of double jeopardy under both the Fifth Amendment of the Federal Constitution and Article I, Section 9 of the State Constitution.⁶

Courts have incorporated a three step approach to analyzing this issue. First, the court looks to see if there is clear legislative intent to authorize two separate punishments for an offense arising out of the same criminal transaction.⁷ In the absence of legislative intent, courts employ the test set out in 1932 in the landmark case of *Blockburger v. U.S.* Here, the U.S. Supreme Court introduced a test for determining whether a double jeopardy violation has occurred as follows:

The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not.⁸

The *Blockburger* test has come to be known as the same elements test.⁹ As such, it is considered a rule of statutory construction.¹⁰

Section 775.021, F.S., codified the test in *Blockburger*, as follows:

(4)(a) Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.

(b) The intent of the Legislature is to convict and sentence for each

⁶ The Fifth Amendment to the Federal Constitution provides that “no person shall...be subject for the same offence to be twice put in jeopardy of life or limb....” Art. I, s. 9 of the State Constitution provides that “no person shall...be twice put in jeopardy for the same offense....”

⁷ *Hunsicker v. State*, 881 So.2d 1166, 1170 (Fla. 5th DCA 2004).

⁸ 284 U.S. 299, 304, 52 S.Ct. 180, 182 (1932).

⁹ Lissa Griffin, *Two Sides of a “Sargasso Sea”: Successive Prosecution for the “Same Offence” in the United States and the United Kingdom*, 37 U. Rich. L. Rev. 471, 476-477 (January 2003).

¹⁰ *Cabrera v. State*, 884 So.2d 482, 484 (Fla. 5th DCA 2004).

criminal offense committed in the course of one criminal episode or transaction and not to allow the principle of lenity as set forth in subsection (1) to determine legislative intent. Exceptions to this rule of construction are:

1. Offenses which require identical elements of proof.
2. Offenses which are degrees of the same offense as provided by statute.
3. Offenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.

These provisions appear in the statutes as rules of construction.

Even where dual convictions do satisfy the *Blockburger* test, a constitutional violation may still occur if the convictions are considered to be degree variants of the same core offense.¹¹ Here, the court asks whether one offense is just an aggravated form of another, differentiated only by degree.¹² By way of example, in the case of *State v. Anderson*, the Florida Supreme Court ruled dual charges of perjury in an official proceeding and providing false information in an application for bail impermissible as they punished the same core crime and were different only as regards the degree of violation.¹³

Assuming that this bill becomes law and that a person is charged both under s. 316.193(4), F.S., and the new subsection (5) of s. 784.05, F.S., and that specific direction is not given in statute regarding separate punishments, the *Blockburger* test applies. Using this analysis, the essential elements required to prove a violation under both sections of statute appear to be identical. These are the fact that a person has driven under the influence, and that a person under 18 years of age is in the vehicle. Further, it appears that a court may consider the two offenses as different degrees of the same offense, particularly in the case of first offenses, although they would both be classified as first-degree misdemeanors.¹⁴

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

¹¹ *Gordon v. State*, 780 So.2d 17, 21 (Fla. 2001).

¹² *Mixson v. State*, 857 So.2d 362, 364 (Fla. 1st DCA 2003).

¹³ 695 So.2d 309, 311 (Fla. 1997).

¹⁴ Section 775.083, F.S., provides for maximum fines of \$500 for second-degree misdemeanors, and \$1,000 for first-degree misdemeanors. Section 775.082, F.S., authorizes maximum sentences of 60 days for second-degree misdemeanors, and one year for first-degree misdemeanors.

B. Private Sector Impact:

A person who commits a violation under the bill would be subjected to a fine not exceeding \$1,000.

C. Government Sector Impact:

Any fiscal impact on local jails is indeterminate but probably minimal under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
