

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 397
SPONSOR(S): Planas
TIED BILLS:

Driving or Boating Under the Influence

IDEN./SIM. BILLS: SB 1642

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Transportation Committee			
3) Justice Appropriations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

Current law provides for increased sanctions when a person who is convicted of driving or boating under the influence had a blood alcohol or breath alcohol level of 0.20 or higher. HB 397 provides that the increased sanctions will apply when an offender's blood or breath alcohol level is 0.16 or more.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: Because this bill lowers the blood or breath alcohol level necessary for increased sanctions to apply, more offenders may qualify for the increased sanctions.

Promote personal responsibility: This bill will increase sanctions for offenders who commit the offense of DUI or BUI and have a blood or breath alcohol level of 0.16 or higher.

B. EFFECT OF PROPOSED CHANGES:

The offense of driving under the influence¹ is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

The offense is punishable as follows²:

- For a first conviction by a fine of not less than \$250 or more than \$500 and by imprisonment for not more than 6 months
- For a second conviction by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.³
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than \$1000 or more than \$2500 and by imprisonment for not more than 12 months.

A third conviction that occurs within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail⁴ and up to five years in prison and a fine of up to \$1000.⁵ A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than \$1000 or more than \$5000.⁶

If a person commits a DUI and has a blood-alcohol level or breath-alcohol level of 0.20 or higher, the offense is punishable by⁷:

- For a first conviction by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months
- For a second conviction by a fine of not less than \$1000 or more than \$2000 and by imprisonment for not more than 12 months.

¹ s. 316.193(1), F.S.

² s. 316.193(2), F.S.

³ s. 316.193(6)(b), F.S.

⁴ s. 316.193(6)(c), F.S.

⁵ s. 316.193(2)(b), F.S.

⁶ Additionally, a person who has been convicted of DUI faces suspension of his or her driver's license and may be required to place an ignition interlock device on his or her vehicle. Section 316.193 also increases sanctions for DUI which results in damage to the property or person of another, serious bodily injury or the death of another person. s. 316.193(3)(c), F.S.

⁷ s. 316.193(4), F.S.

The period of incarceration for a third DUI with the higher blood or breath alcohol level is the same as it would be if the person had a blood or breath alcohol level of 0.08 or above. The minimum fine is increased to \$2000. For the purposes of the provision, only the offense for which the defendant is being sentenced must involve a blood or breath alcohol level of 0.20 or higher in order for the increased sanctions to apply.

Section 327.35, F.S. prohibits the offense of boating under the influence which has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute.

During the 1993 session, the legislature lowered the blood or breath alcohol level required for DUI from 0.10 to 0.08.⁸ Prior to this, the increased sanctions had applied when the offender's blood or breath alcohol level was double that of the statutory limit. When the legislature lowered the statutory limit to 0.08, they did not lower the level required to qualify for the increased sanctions but instead left it at 0.20. HB 397 amends the DUI and BUI statutes to lower the blood or breath alcohol level for which the increased sanctions will apply from 0.20 to 0.16 – double the amount of the current threshold for DUI or BUI.

HB 397 also makes corresponding changes to section 316.656, F.S. which provides that no trial judge may accept a plea of guilty to a lesser offense from a person charged with DUI who has a blood or breath alcohol level of 0.20 or more. The bill changes this provision to apply when a person has a blood or breath alcohol level of 0.16 or more.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S. to provide for enhanced sanctions for a person who is convicted of DUI and who had a blood or breath alcohol level of .16 or higher.

Section 2. Amends s. 316.656, F.S. to provide that trial judge may not accept a plea of guilty to a lesser offense from a person convicted of DUI who had a blood or breath alcohol level of .16 or higher.

Section 3. Amends s. 327.35, F.S. to provide for enhanced sanctions for a person convicted of BUI who had a blood or breath alcohol level of .16 or higher.

Sections 4-54: Reenacting sections of statute for the purpose of incorporating amendments to sections 316.193 and 327.35 by reference.

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.

⁸ See 93-124, Laws of Florida.

2. Expenditures:

This bill provides for increased maximum jail sentences for a person who commits DUI and had a blood or breath alcohol level of 0.16 or higher, rather than 0.20 or higher. Because of this, more offenders may be subject to the increased maximum jail sentence and there may be a resulting impact on county jails.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES