

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1225

Reckless Driving

SPONSOR(S): Glorioso

TIED BILLS:

IDEN./SIM. BILLS: SB 1376

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

SUMMARY ANALYSIS

This bill amends section 316.192, F.S., to expand the acts that constitute reckless driving and to specify that certain acts constitute reckless driving per se.

This bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Promote Personal Responsibility- This bill expands the acts that constitute reckless driving and specifies that certain acts constitute reckless driving per se.

B. EFFECT OF PROPOSED CHANGES:

Current Florida Law

Section 316.192, F.S., provides that any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

To prove the crime of reckless driving, the State must prove the following two elements¹:

1. Defendant drove a vehicle in Florida.
2. He or she did so with a willful² or wanton³ disregard for the safety of persons or property.

A first conviction of reckless driving is punishable by imprisonment for a period of not more than 90 days or by fine of not less than \$25 nor more than \$500, or by both such fine and imprisonment.⁴

A second or subsequent conviction of reckless driving is punishable by imprisonment for not more than 6 months or by a fine of not less than \$50 nor more than \$1,000, or by both such fine and imprisonment.⁵

Penalties are increased to a first degree misdemeanor⁶ for damage to the property or person of another.⁷

Penalties are increased to a third degree felony⁸ for serious bodily injury which consist of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.⁹

Effective of Bill

This bill amends 316.192, F.S., to expand the acts that constitute reckless driving to include driving a vehicle at a speed or in a manner that is likely to endanger any person or property.

This bill also amends section 316.192, F.S., to provide that the following acts constitute reckless driving per se:

- Driving 20 miles per hour or more in excess of the posted speed limit that contributes to an accident that results in property damage, personal injury, or death.
- Driving 25 miles per hour or more in excess of the posted speed limit.

¹ 28.5 Florida Standard Jury Instructions in Criminal Cases.

² The Florida Standard Jury Instructions defines this term as: intentionally, knowingly and purposely.

³ The Florida Standard Jury Instructions defines this term as: a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.

⁴ Section 316.192(2)(a), F.S.

⁵ Section 316.192(2)(b), F.S.

⁶ Punishable by a term of imprisonment not to exceed 1 year and a fine of \$1,000. ss. 775.082(4)(a) and 775.083(1)(d), F.S.

⁷ Section 316.192(3)(c)1., F.S.

⁸ Punishable by a term of imprisonment not to exceed 5 years and a fine of \$5,000. ss. 775.082(3)(d) and 775.083(1)(c), F.S.

⁹ Section 316.192(3)(c)2., F.S.

- Driving 90 miles per hour or more regardless of the posted speed limit.
- Fleeing a law enforcement officer.

C. SECTION DIRECTORY:

Section 1 amends section 316.192, F.S. to expand the acts that constitute reckless driving and to specify that certain acts constitute reckless driving per se.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference met March 21, 2006 and determined that HB 1225 would have an insignificant 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:

It could be argued that section (1)(b) of HB 1225 (acts constituting reckless driving per se) creates an unconstitutional mandatory presumption because it relieves the state of its burden of proving willful or wanton disregard for the safety of persons or property, an essential element of the offense of reckless driving.

In, County Court v. Allen¹⁰, the Court used the terms “permissive inference” and “mandatory presumption” to describe two types of evidentiary devices that will be subject to constitutional scrutiny. The court describes these two types of evidentiary devices as follows:

A permissive inference allows, but does not require, the trier of fact to infer the elemental fact from proof of a basic fact and does not place any burden on the defendant. A mandatory presumption tells a factfinder that he or they must find the elemental fact upon proof of the basic fact, unless the defendant offers evidence that rebuts the presumption created by the connection between the two facts.¹¹

In light of these differences, the threshold inquiry in analyzing the constitutionality of a statutory presumption is to determine the type of presumption that the statute creates.¹² If a statute creates a mandatory presumption, the Court has generally examined the presumption on its face to determine the extent to which the basic and elemental facts coincide.¹³ “A criminal statutory presumption must be regarded as ‘irrational’ or ‘arbitrary,’ and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.”¹⁴

Section (1)(b) of HB 1225 provides that certain acts constitute reckless driving per se. Per se is a term of art that appears nowhere in Florida’s criminal statutes. Black’s legal dictionary defines per se as not requiring extraneous evidence or support to establish its existence. The term per se appears to be a mandatory presumption since by definition it requires no other evidence or support; thus, telling a factfinder that he or they must find the elemental fact (willful or wanton disregard for the safety of persons or property) upon proof of the basic fact (traveling 25 miles per hour or more in excess of the posted speed); nor, does it appear with substantial assurance that willful or wanton disregard for the safety of persons or property is more likely than not to flow from the per se acts listed under (1)(b) of HB 1225. In other words, a person could have a justifiable reason (e.g. medical emergency) for driving 25 miles per hour or more in excess of the posted speed limit and do so in a manner that does not rise to the level of willful or wanton disregard for the safety of persons or property, an essential element of the offense of reckless driving.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Many of the per se offenses addressed in HB 1225 are currently in Florida Statute. For example, s. 316.192(3)(c)1., F.S., addresses reckless driving that causes damage to the property or person of another, s. 316.192(3)(c)2., F.S., addresses reckless driving that causes serious bodily injury to another, s. 782.071, F.S., addresses vehicular homicide, and s. 316.1935, F.S., addresses fleeing or attempting to elude a law enforcement officer. Furthermore, penalties under current statute are more severe than the penalties would be under this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹⁰ 442 U.S. 140, 157-60 (1979).

¹¹ Allen, at 157; State v. Brake, 796 So.2d 522, 529 (Fla. 2001); State v. Rygwelski, 899 So.2d 498, 501 (2nd DCA 2005).

¹² Rygwelski, at 501.

¹³ Allen, at 158; Brake, at 529.

¹⁴ Leary v. U.S., 395 U.S. 6, 36 (1969); Brake, at 529.