

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: Criminal Justice Committee

BILL: CS/SB 2468

INTRODUCER: Criminal Justice Committee and Senator Campbell

SUBJECT: DUI

DATE: April 25, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends s. 316.193(1), F.S., to provide that any person who operates a vehicle under the influence (DUI) creates a rebuttable presumption that he or she caused or contributed to causing damage to the person or property of another, serious bodily injury to another, or death to another human being or unborn quick child. *(Currently, a person who operates a vehicle under the influence and who causes or contributes to causing: damage to the property or the person of another, commits a first degree misdemeanor; serious bodily injury to another, commits a third degree felony; or the death of any human being or unborn quick child, commits DUI manslaughter, a second degree felony. The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid.)*

The bill also provides that any person who operates a vehicle under the influence creates a rebuttable presumption that he or she operated the vehicle in a reckless manner likely to cause death or great bodily harm to a human being for purposes of committing vehicular homicide. *(Vehicular homicide, a second degree felony, is the killing of a human being 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.)*

This bill substantially amends sections 316.193 and 782.071 of the Florida Statutes.

II. Present Situation:

Driving Under the Influence: Section 316.193(1), F.S., provides that the offense of DUI 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.

A person who is in violation of this provision, who operates a vehicle and *who by reason of such operation, causes or contributes to causing*:

- Damage to the property or the person of another, commits a first degree misdemeanor.
- Serious bodily injury to another, commits a third degree felony.
- The death of any human being or unborn quick child commits DUI manslaughter, a second degree felony. The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid as required by s. 316.062, F.S.

Until 1986, the DUI manslaughter statute (previously referred to as "manslaughter by intoxication") was interpreted as not requiring proof of a "causal connection between the manner of operation of the defendant's motor vehicle and the death of the victim." *Magaw v. State*, 537 So.2d 564, 565 (Fla. 1989). The Supreme Court referred to the statute as having "strict liability consequences." *Baker v. State*, 377 So.2d 17 (Fla. 1979)(upholding constitutionality of statute). In 1986 the statute was amended to "introduce causation as an element" of the offense. *Magaw*, 537 So.2d at 567; *State v. Hubbard*, 751 So.2d 552 (Fla. 1999).

Vehicular Homicide: Vehicular homicide is 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*.¹ The degree of culpability required to prove that a driver was reckless is less than culpable negligence, which is the standard for manslaughter, but more than a mere failure to use ordinary care.² The offense is a second degree felony. If at the time of the accident, the person knew or should have known that the accident occurred and the person failed to give information or render aid, the offense is a first degree felony.

III. Effect of Proposed Changes:

The bill provides the short title of "Jillian's Law."

It amends s. 316.193(1), F.S., to provide that for purposes of DUI causing damage to property, serious bodily injury, or death, a person who operates a vehicle under the influence creates a rebuttable presumption that he or she caused or contributed to causing damage to the person or

¹ s. 782.071, F.S.

² *McCreary v. State*, 371 So.2d 1024 (Fla.1979); *Michel v. State*, 752 So.2d 6, 12 (Fla. 5th DCA 2000)(holding that evidence supported vehicular homicide conviction where defendants had been ordered off the interstate for failing to have the proper equipment on their truck, then drove the truck on a dark stretch of highway at night, without any rear warning lights, at a speed of between 22 and 24 m.p.h. and with metals rails hanging out of the back of the truck, which had no bumper).

property of another, serious bodily injury to another, or death to another human being or unborn quick child.

The bill also amends s. 782.071, F.S., to provide that for purposes of vehicular homicide, a person who operates a vehicle under the influence creates a rebuttable presumption that he or she operated the vehicle in a reckless manner likely to cause death or great bodily harm to a human being.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Currently, in order to prove a DUI manslaughter case, in addition to proving the impairment of the driver, the state must prove that by operating the vehicle, the driver caused or contributed to causing the death of a human being. This bill provides that the fact that a person drove under the influence creates a rebuttable presumption that the person caused or contributed to causing the death of another human being. The bill also creates a similar presumption in the vehicular homicide statute. An issue could be raised as to whether this provision violates the Due Process Clause by unconstitutionally shifting the burden of proof to the defendant.

A recent Second District Court of Appeal case contained a thorough discussion on the issue of presumptions:

‘Inferences and presumptions are a staple of our adversary system of factfinding.’ The ultimate test of the constitutional validity of any such evidentiary device is that it ‘must not undermine the factfinder’s responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt.’ To satisfy the requirements of due process, all inferences and presumptions must pass the ‘rational connection’ test, which requires, at minimum, that it must “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.” In *Allen*, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777, the Court had occasion to consider and refine what had been its somewhat confusing past treatment of inferences and presumptions. The *Allen* Court examined the value of these evidentiary devices and their validity under the due process clauses contained in the Fifth and Fourteenth Amendments to the United States Constitution in light of ‘the strength of the connection

between the particular basic and elemental facts involved and on the degree to which the device curtails the factfinder's freedom to assess the evidence independently.' The Court used the terms 'permissive inference' and 'mandatory presumption' to describe two types of evidentiary devices that will be subjected to constitutional scrutiny.

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. In this situation, the basic fact may constitute prima facie evidence of the elemental fact. On the other hand, 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. Because of the differences in the two types of presumptions, the threshold inquiry in analysis of the constitutionality of a statutory presumption is to determine the type of presumption that the statute creates.

If the statute creates a permissive inference, a party challenging it is generally required to demonstrate its invalidity as applied to him. Because a permissive inference allows a trier of fact to reject the inference and does not shift the burden of proof, 'it affects the application of the 'beyond a reasonable doubt' standard only if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference.' Accordingly, a permissive inference will be valid so long as, under the facts of the case, the presumed fact 'more likely than not' flows from the basic fact and the inference is not the sole basis for a finding of guilt. On the other hand, if, under the facts of the case, it is clear that the inference is the sole basis for a finding of guilt, the fact proved must be sufficient to support the inference of guilt beyond a reasonable doubt.

If the 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. Because the jury must accept the mandatory presumption even if it is the sole evidence of an element of the offense and because the State bears the burden of establishing guilt, the presumed fact must flow from the basic fact beyond a reasonable doubt.

State v. Rygwelski, 899 So.2d 498, 501 -502 (Fla.2nd DCA. 2005)(citations omitted)(holding that statute that provides that failure to redeliver property within five days after receipt of demand for return "is prima facie evidence of fraudulent intent" creates a permissive inference, not a mandatory presumption).

In *State v. Brake*, 796 So.2d 522 (Fla. 2001), the Florida Supreme Court considered the constitutionality of a statutory presumption that a person who lured or enticed a child under the age of 12 into a dwelling without the consent of the child's parent was doing so for other than a lawful purpose. In striking the presumption, the court analyzed the provision as follows:

In assessing the constitutionality of such presumptions, the United States Supreme Court "has generally examined the presumption on its face to determine the extent to which the basic and elemental facts coincide." As the Supreme Court [has] explained "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.”

In the instant case, the statute permits the State to prove the mens rea element of the offense (“for other than a lawful purpose”) by proving lack of parental consent for the child to enter the structure, dwelling, or conveyance with the defendant. We cannot say with substantial assurance that a defendant’s unlawful intent can be so presumed. For example, a neighbor who invites a child into their house for a perfectly innocent reason is not likely to seek parental permission.

According to the language of SB 2468, any person who operates a vehicle under the influence *creates* a “rebuttable presumption” that he or she caused damage or death. This language appears to create a “mandatory presumption” – requiring the factfinder to find that the defendant caused the harm or death unless the presumption is rebutted by the defendant. As a result, it appears that the test to be applied to the presumption is whether the presumed fact (causation of harm or death) must flow from the basic fact (operating a vehicle under the influence) beyond a reasonable doubt.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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