

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 297 CS

Driving and Boating Under the Influence

SPONSOR(S): Harrell

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Kramer	Kramer
2) Transportation Committee			
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

Currently, a court must order imprisonment for not less than 30 days for a fourth or subsequent driving under the influence (DUI) or boating under the influence (BUI) offense that occurs within 10 years of a prior conviction. There is no minimum mandatory term of imprisonment required if the fourth or subsequent DUI or BUI does not occur within 10 years of a prior conviction. HB 297 will require the imposition of a two year minimum mandatory sentence for a fourth or subsequent DUI or BUI conviction, regardless of when the prior conviction occurred. The bill further provides that there shall be no substitution of this minimum mandatory term of imprisonment with treatment alternatives but the court may, with the consent of the state, order the defendant to serve a minimum mandatory sentence of 1 year of incarceration followed by a period of probation during which the defendant must attend and successfully complete a residential alcohol treatment program, a residential drug abuse treatment program or be placed on community control.

Currently for a fourth or subsequent DUI committed within 10 years of a prior conviction, the judge must order, as a condition of probation, the impoundment or immobilization of all vehicles owned by the defendant for 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days. The bill requires that for a fourth or subsequent DUI (regardless of when the prior conviction occurred), the judge must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 120 days or for the unexpired term of any lease or rental agreement that expires within 120 days. For a fourth or subsequent BUI, the court must order impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name for the same period of time as for a DUI offense. The bill provides that the court may dismiss the order in certain circumstances.

The bill also requires that every judgment of guilty for a DUI or BUI offense must be in writing, signed by the judge and recorded by the clerk of the circuit court. The fingerprints of the defendant must be affixed to the judgment and the judge must certify that the fingerprints were placed on the judgment by the defendant in open court. The bill also requires the defendant's social security number to be placed on the judgment. The written judgment of guilty made in compliance with this provision, or a certified copy, will be admissible in court as prima facie evidence that the fingerprints are the fingerprints of the defendant against whom the judgment of guilty was rendered.

The Criminal Justice Impact Conference met on January 9, 2006 to determine the prison bed impact of this bill as originally filed on the Department of Corrections. See fiscal section of this analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill will require the imposition of a minimum mandatory sentence for a fourth or subsequent DUI or BUI conviction and the impoundment of the offender's vehicle for a fourth or subsequent DUI.

Promote personal responsibility: The bill increases the sanctions for DUI and BUI.

B. EFFECT OF PROPOSED CHANGES:

DUI

The offense of driving under the influence¹ (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.

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.⁴

A third conviction for an offense that occurs within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail⁵ and up to five years in prison and a fine of up to \$1000.⁶ 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 \$5000.⁷ If the fourth or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.⁸

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(2)(b)2, F.S.

⁵ s. 316.193(6)(c), F.S.

⁶ s. 316.193(2)(b)1, F.S.

⁷ s. 316.193(2)(b)3, F.S. Additionally, a person who has been convicted of DUI 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.

⁸ s. 316.193(6)(c), F.S.

At the judge's discretion, a defendant may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced in a residential alcoholism treatment program or a residential drug abuse treatment program.⁹

Current law also requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles as follows:

- For a first DUI conviction, the court must order the impoundment or immobilization of the vehicle that was used in the DUI offense or any one vehicle registered in the defendant's name at the time of impoundment or immobilization for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant.
- For a second DUI conviction within 5 years of the date of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days.
- For a third or subsequent DUI that occurs within 10 years of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days.¹⁰

The court can dismiss the order of impoundment or immobilization in specified circumstances.¹¹ The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant and must occur concurrently with the driver's license revocation imposed under s. 322.28(2)(a), F.S.. This section requires the revocation of a person's driver's license for not less than 180 days and no more than 1 year for a first DUI conviction¹²; for not less than 5 years for a second conviction for an offense that occurs within 5 years after the date of a prior conviction¹³ and for not less than 10 years for a third conviction for an offense that occurs within 10 years of a prior conviction.¹⁴ A fourth DUI conviction results in permanent revocation of a person's driving privilege.¹⁵

BUI

Section 327.35, F.S. prohibits the offense of boating under the influence (BUI) 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. For a third or subsequent BUI within 10 years of a prior conviction, the court must, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name for a period of 90 days or for unexpired term of any lease or rental agreement that expires within 90 days.

Effect of HB 297

Sentencing: Currently there is no mandatory minimum term of imprisonment for a fourth or subsequent DUI or BUI unless it occurs within 10 years of a prior DUI or BUI in which case, a 30 day minimum mandatory sentence must be imposed. The bill amends the DUI and BUI statutes to provide that for a fourth or subsequent conviction, the court must order imprisonment for not less than 2 years,

⁹ s. 316.193(6)(k), F.S.

¹⁰ See s. 316.193(6)(a), (b) and (c), F.S.

¹¹ See s. 316.193(6)(e),(f),(g) and (h), F.S.

¹² s. 322.28(2)(a)1, F.S.

¹³ s. 322.28(2)(a)2, F.S.

¹⁴ s. 322.28(2)(a)3, F.S.

¹⁵ s. 322.28(2)(e), F.S.

regardless of when a prior conviction occurred. The bill further provides that there shall be no substitution of this minimum mandatory term of imprisonment with treatment alternatives but the court may, with the consent of the state, order the defendant to serve a minimum mandatory sentence of 1 year of incarceration followed by a period of probation during which the defendant must attend and successfully complete a residential alcohol treatment program, a residential drug abuse treatment program or be placed on community control.

Impoundment of vehicle or vessel: Currently, for a third or subsequent DUI that occurs within 10 years of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days. The bill provides that as a condition of probation for a fourth or subsequent DUI conviction, regardless of when a prior conviction occurred, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 120 days or for the unexpired term of any lease or rental agreement that expires within 120 days. In conformity with current law, the bill provides that the impoundment or immobilization must not occur concurrently with any incarceration and must occur concurrently with the revocation of the offender's driver's license. The judge will be permitted to dismiss the impoundment or immobilization in accordance with current law.

For a fourth or subsequent BUI, the court must order impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name for the same period of time as for a DUI offense. The bill provides that a person who owns but was not operating the vessel when an offense occurred may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds that the owner was unaware of the defendant's prior conviction and sentence or if the court finds that there are other mitigating circumstances that should allow the owner of the vessel to secure the release of the vessel to the owner's possession, the court may do so by dismissing the order of impoundment or immobilization with or without cost to the vessel owner.

Judgment: The bill also provides that every judgment of guilty for DUI or BUI offense must be in writing, signed by the judge and recorded by the clerk of the circuit court. The judge must cause to be affixed to the judgment the fingerprints of the defendant against whom the judgment is rendered. The bill sets the wording of a certificate to be signed by the judge certifying that the fingerprints were placed on the judgment by the defendant in open court. The bill also requires the defendant's social security number to be placed on the judgment. The written judgment of guilty made in compliance with this section, or a certified copy, will be admissible in court as prima facie evidence that the fingerprints are the fingerprints of the defendant against whom the judgment of guilty was rendered.¹⁶

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S. to provide for minimum mandatory term of imprisonment for fourth or subsequent DUI conviction; provides for impoundment of vehicle.

Section 2. Amends s. 327.35, F.S. to provide for minimum mandatory term of imprisonment for fourth or subsequent BUI conviction; provides for impoundment of vehicle or vessel.

Section 3. Provides effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹⁶ This provision is substantially similar to s. 921.241, F.S. relating to judgments of guilty for felony offenses.

None.

2. Expenditures:

The Criminal Justice Impact Conference met on January 9, 2006 to consider the prison bed impact of this bill as originally filed on the Department of Corrections. The conference estimated that the impact would be as follows:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2006-2007	45	45	\$429,165	\$8,887,872	\$9,317,037	\$9,317,037
2007-2008	224	179	\$2,606,476	\$5,483,012	\$8,089,488	\$17,406,525
2008-2009	358	134	\$5,752,197	\$0	\$5,752,197	\$23,158,722
2009-2010	358	0	\$7,225,156	\$0	\$7,225,156	\$30,383,878
2010-2011	358	0	\$7,391,268	\$0	\$7,391,268	\$37,775,146
Total	358	358	\$ 23,404,262	\$ 14,370,884	\$37,775,146	\$37,775,146

Notes: Analysis assumes that there will be a 50% increase in the incarceration rate for felony DUI (4th or subsequent conviction), increasing from 41.4% to 62.1%.

Additional offenders sentenced to prison were assumed to serve 24 months.

The conference has not considered the prison bed impact of this bill as amended. As filed, the bill required the imposition of a two-year minimum mandatory sentence. As amended, the bill requires the imposition of a one year sentence and gives the judge the option to order treatment for the second year of the sentence. This may reduce the prison bed impact on the department. This information will be updated with information about the bill as amended.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

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

As originally filed, the bill required the imposition of a 2 year minimum mandatory sentence for a fourth DUI or BUI and specified that the judge could not order treatment options in lieu of this term of imprisonment. The Criminal Justice Committee adopted a strike-all amendment which authorizes the judge, with the consent of the state, to order one year of incarceration followed by a period of probation during which the defendant must attend and complete a residential alcohol or drug abuse treatment program or be placed on community control. The amendment added language requiring the defendant's fingerprints to be affixed to judgments of guilty for DUI and BUI as discussed in the analysis above. The bill also amended the provision relating to impoundment of vehicles or vessels for a BUI conviction.