

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 297 CS

Driving and Boating Under the Influence

**SPONSOR(S):** Harrell

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2296

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Transportation Committee</u>	<u>13 Y, 3 N</u>	<u>Thompson</u>	<u>Miller</u>
3) <u>Criminal Justice Appropriations Committee</u>	<u>5 Y, 0 N</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
4) <u>Justice Council</u>	<u>10 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>De La Paz</u>
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 297 with C/S requires the imposition of a 2-year minimum mandatory sentence for a fourth or subsequent Driving under the Influence (DUI) or Boating under the Influence (BUI) conviction, regardless of when the prior conviction occurred. This 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 1-year and 1-day minimum mandatory sentence 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.

This bill requires that for a fourth or subsequent DUI, the judge must order the impoundment or immobilization of all vehicles owned by the defendant 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 a period of 120 days. This bill allows the court to dismiss the order in certain circumstances. Current law requires a 90-day impoundment period if the offense occurs within 10 years of a prior conviction. In conformity with current law, the bill provides that the impoundment or immobilization must not occur at the same time as the incarceration.

HB 297 C/S also requires that every judgment of guilty for a DUI or BUI offense must: (1) be in writing, signed by the judge and recorded by the clerk of the circuit court; (2) include the defendant's fingerprints; and (3) include the defendant's social security number. The bill requires the judge to certify that the fingerprints were placed on the judgment by the defendant in open court.

The Criminal Justice Impact Conference (CJIC) met on February 28, 2006 and concluded that the bill would increase the inmate population by 275 inmates by the third year of implementation. See fiscal section 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 influence<sup>1</sup> (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 follows<sup>2</sup>:

- 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.<sup>3</sup>
- 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.<sup>4</sup>

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 jail<sup>5</sup> and up to five years in prison and a fine of up to \$1000.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>1</sup> s. 316.193(1), F.S.

<sup>2</sup> s. 316.193(2), F.S.

<sup>3</sup> s. 316.193(6)(b), F.S.

<sup>4</sup> s. 316.193(2)(b)2, F.S.

<sup>5</sup> s. 316.193(6)(c), F.S.

<sup>6</sup> s. 316.193(2)(b)1, F.S.

<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

The court can dismiss the order of impoundment or immobilization in specified circumstances.<sup>11</sup> 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 conviction<sup>12</sup>; for not less than 5 years for a second conviction for an offense that occurs within 5 years after the date of a prior conviction<sup>13</sup> and for not less than 10 years for a third conviction for an offense that occurs within 10 years of a prior conviction.<sup>14</sup> A fourth DUI conviction results in permanent revocation of a person's driving privilege.<sup>15</sup>

## **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 Bill**

**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,

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<sup>9</sup> s. 316.193(6)(k), F.S.

<sup>10</sup> See s. 316.193(6)(a), (b) and (c), F.S.

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

<sup>12</sup> s. 322.28(2)(a)1, F.S.

<sup>13</sup> s. 322.28(2)(a)2, F.S.

<sup>14</sup> s. 322.28(2)(a)3, F.S.

<sup>15</sup> 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 and 1 day 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.<sup>16</sup>

#### 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:

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<sup>16</sup> 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 February 28, 2006 to consider the prison bed impact of HB 297 w/CS 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	\$8,175,419	\$8,604,584	\$8,604,584
2007-2008	203	158	\$2,402,996	\$2,946,096	\$5,349,092	\$13,953,676
2008-2009	275	72	\$4,724,313	\$0	\$4,724,313	\$18,677,989
2009-2010	275	0	\$5,550,050	\$0	\$5,550,050	\$24,228,039
2010-2011	275	0	\$5,677,650	\$0	\$5,677,650	\$29,905,689
<b>Total</b>	<b>275</b>	<b>275</b>	<b>\$ 18,784,174</b>	<b>\$ 11,121,515</b>	<b>\$29,905,689</b>	<b>\$29,905,689</b>

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference only forecasts the prison bed impact of proposed legislation. The cost figures reflected in the table above are not formally adopted by the Criminal Justice Impact Conference. Rather, they are provided by staff of the conference to give the reader a general sense of magnitude.

These figures reflect overall average operating costs and average construction costs per bed. As such, the operational costs do not take into account certain fixed costs such as administrative overhead, perimeter security, library staff, on-site medical staff, etc. that are already funded in the department's base budget. Thus, they tend to overstate the actual increase in the budget needed to accommodate the additional inmates. The fixed capital outlay costs are presented as if the state could simply build one prison bed at a time when the reality is that the state builds an entire facility when it constructs

beds. They do not take into account existing or planned capacity that would enable the state to absorb the impact within current appropriations.

Funding is provided in the House General Appropriations Act to complete construction of two new prison facilities that will increase the capacity of the system by 2,265 beds. Assuming that unforeseen factors do not further increase the demand for prison beds, the House General Appropriations Act will provide for sufficient capacity to accommodate the increase in the inmate population expected to result from passage of this bill for the next three years, the time typically allotted for new prison construction. The bill will, however, result in the need for building new capacity sooner than the state would otherwise experience without the proposed change in law. This impact will be folded into the normal forecasting process for future planning and budgeting purposes.

In addition, the Secretary of the Department of Corrections has suggested that these inmates would be appropriate for work release centers that provide substance abuse treatment overlay services. These beds can typically be brought on-line much more quickly than a major institution and they generally have lower construction and operating costs than major institutions.

### **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.

The Justice Council adopted an amendment which states that the term of imprisonment for the fourth DUI or BUI offense must be at least one day and one year. This will clarify that this term of incarceration is to be served in state prison and not in county jail. The estimate of the Criminal Justice Impact Conference discussed above assumed that the term of imprisonment would be served in state prison. As a result, this amendment should not result in any additional cost to the state beyond that indicated in the fiscal section of this analysis.