

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1243

Driving and Boating Under the Influence

SPONSOR(S): Harrell

TIED BILLS:

IDEN./SIM. BILLS: SB 1616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	_____	<u>Kramer</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1243 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.

The bill will require a person who has been convicted of a third DUI offense to serve a mandatory 30 day jail sentence. Currently, such a sentence is required to be imposed only if the third DUI offense occurred within 10 years of a prior offense.

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.

HB 1243 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.

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.
- 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 Bill

Sentencing: Currently while the offense is punishable by up to five years in prison, there is no mandatory minimum term of imprisonment for a fourth or subsequent DUI or BUI offense unless it occurs within 10 years of a prior DUI or BUI. In such a 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, regardless of when a prior

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.

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.

The bill also removes language from current law which provides that minimum 30 days sentence for a third or subsequent DUI or BUI offense must be imposed only for an offense that occurs within a period of 10 years after the date of a prior conviction. Under the bill, the 30 day minimum sentence will apply for all third-time DUI or BUI convictions, regardless of when a prior conviction occurred.

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 the impoundment described above will be required for a third DUI offense, regardless of when a prior offense occurred.

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.

Under the bill, for a third BUI conviction, regardless of when a prior offense occurred, 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 90 days. For a fourth BUI offense, the court must order impoundment of the vessel or vehicle for 120 days.

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:

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

Section 1. Provides that the act may be cited as the "Barry and Sydney Mazer Act".¹⁷

Section 2. 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 3. 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 4. Provides effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill on the Department of Corrections. The bill creates a 2 year minimum mandatory sentence for a fourth DUI offense. The bill requires that at least a year and a day of this sentence must be served in state prison. The judge will be authorized to order that the remainder of the sentence be served on community control or in residential treatment. During the 2006 session, CJIC indicated that CS/HB 297, which was substantially similar to this bill, would have a \$29 million impact on DOC over the next five years.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill will require a minimum mandatory 30 day jail sentence for all third DUI offenses. Under current law, this minimum mandatory sentence only applies if the third DUI was within 10 years of a prior conviction. This could have a county jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require impoundment of a vehicle or vessel for a fourth DUI or BUI offense.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹⁷ According to news reports, Barry Mazer and his two-year old daughter Sydney were killed in a car accident in Broward County. Four other children in the vehicle were seriously injured. The driver of the other vehicle was charged with DUI manslaughter. <http://www.baynews9.com/content/36/2006/11/20/200745.html?title=Man,%20daughter%20killed%20in%20DUI%20accident>

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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES