

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1297 Driving Over the Speed Limit
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Bell
TIED BILLS: IDEN./SIM. **BILLS:** SB 1414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	15 Y, 1 N, As CS	Mathews	Hall
2) Tourism, Infrastructure & Energy Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Speed has a significant impact on the number of vehicle crashes and on the severity of resulting injuries. Increased driving speed has been found to increase the:

- Distance a vehicle travels from the time a driver detects an emergency to the time the driver reacts;
- Distance needed to stop a vehicle once the driver starts to brake; and
- Risk that an evasive steering maneuver will result in loss of control.

Section 316.183, F.S., prohibits a person from driving a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions, with regard to the existing actual and potential hazards. A violation for unlawful speed is a noncriminal traffic infraction, punishable as a moving violation. The fines for unlawful speed are based on the miles per hour (MPH) over which a vehicle exceeded the speed limit and range from a warning to \$250.

Section 316.192, F.S., prohibits a person from driving a vehicle in willful or wanton disregard for the safety of persons or property as reckless driving and designates fleeing a law enforcement officer in a vehicle as reckless driving per se. Under current law, speed may be used as a factor to establish that a driver committed reckless driving, however, courts have held that speed alone is not sufficient to prove reckless driving. The punishment for reckless driving is:

- Up to 90 days in jail, a \$25 to \$500 fine, or both, for a first conviction.
- Up to six months in jail, a \$50 to \$1,000 fine, or both, for a second or subsequent conviction.
- A first degree misdemeanor when a driver causes damage to property or another person.
- A third degree felony when a driver causes serious bodily injury to another person.

A driver who exceeds the posted speed limit by 50 MPH or more on specified streets and highways may also be cited for a moving violation under s. 316.1926(2), F.S., and required to pay an increased fine.

CS/HB 1297 amends s. 316.192, F.S., to designate driving a vehicle 40 MPH or more above the lawful or posted speed limit as reckless driving per se. The bill also amends s. 316.1926(2), F.S., to change the threshold speed for which a driver may be cited for a moving violation from 50 to 39 MPH over the speed limit and specifies that a person who exceeds the speed limit by 40 MPH or more must be punished under s. 316.192, F.S., for reckless driving.

The bill may have an indeterminate positive impact on jail and prison beds by creating new criminal offenses.

The bill provides an effective date of October 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Speed has a significant impact on the number of vehicle crashes and on the severity of resulting injuries.¹ In 2019, more than 9,000 deaths, or 26 percent of all crash fatalities, occurred in speed-related crashes.² Increased driving speed has been found to increase the:

- Distance a vehicle travels from the time a driver detects an emergency to the time the driver reacts;
- Distance needed to stop a vehicle once the driver starts to brake; and
- Risk that an evasive steering maneuver will result in loss of control.³

Evidence has shown that the higher the vehicle speed, the higher the likelihood that safeguards like seatbelts and airbags will fail, causing a higher likelihood of significant harm to vehicle occupants.⁴

Section 316.183, F.S., prohibits a person from driving a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions, with regard to the existing actual and potential hazards.⁵ A violation of s. 316.183, F.S., is a noncriminal traffic infraction, punishable as a moving violation.⁶ The fines⁷ for unlawful speed under s. 316.183, F.S., are based on the miles per hour (MPH) over which a vehicle exceeded the speed limit as follows⁸:

Speed Exceeding the Limit By:	Fine:
1-5 MPH	Warning
6-9 MPH	\$25
10-14 MPH	\$100
15-19 MPH	\$150
20-29 MPH	\$175
30 MPH +	\$250

Additionally, s. 316.192, F.S., provides that any person who drives a vehicle in willful⁹ and wanton¹⁰ disregard for the safety of persons or property is guilty of reckless driving.¹¹ The punishment for reckless driving is:

- Up to 90 days in jail, a \$25 to \$500 fine, or both, for a first conviction.¹²
- Up to six months in jail, a \$50 to \$1,000 fine, or both, for a second or subsequent conviction.¹³
- A first degree misdemeanor¹⁴ when a driver causes damage to property or another person.¹⁵
- A third degree felony¹⁶ when a driver causes serious bodily injury¹⁷ to another person.

¹ The Insurance Institute for Highway Safety (IIHS), *Speed*, <https://www.iihs.org/topics/speed> (last visited Jan 25, 2022).

² *Id.*

³ *Id.*

⁴ IIHS, *Dangers of Speed*, <https://www.iihs.org/topics/speed> (last visited January 25, 2022).

⁵ S. 316.183(1), F.S.

⁶ S. 316.183(7), F.S.

⁷ A driver may also be responsible for various fees and court costs in addition to the base fine pursuant to the provisions under s. 318.18, F.S.

⁸ S. 318.18(3)(b), F.S.

⁹ Willful means intentionally, knowingly, and purposely. *Smith v. State*, 218 So. 3d 996, 998 (Fla. 2d DCA 2017).

¹⁰ Wanton means with a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property. *Smith v. State*, 218 So. 3d 996, 998 (Fla. 2d DCA 2017).

¹¹ S. 316.192, F.S.

¹² S. 316.192(2)(a), F.S.

¹³ S. 316.192(2)(b), F.S.

¹⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁵ S. 316.192(3), F.S.

¹⁶ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082, 775.083, and 775.084, F.S.

¹⁷ Serious bodily injury means an injury to any person which consists 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. S. 316.192(3)(c)2., F.S.

Additionally, a driver who exceeds the speed limit by 50 MPH or more on specified streets or highways shall also be cited for a moving violation and is subject to the penalties under ch. 318, F.S., which include an increased fine.¹⁸

Whether excessive speed alone constitutes recklessness has been an issue considered by courts on many occasions. In *Harris v. State*, the Second District Court of Appeal held that speeding alone is insufficient to prove recklessness. The court recognized that “merely speeding, without any other facts or circumstances demonstrating recklessness as distinguished from negligence, is insufficient...”¹⁹ Alternatively, in *Copertino v. State*, the Fourth District Court of Appeal held that a vehicle’s rate of speed can be proven to be so excessive under the circumstances that to travel that fast under the conditions is by itself a reckless disregard for human life or the safety of persons exposed to the speed.²⁰ To illustrate its holding, the court in *Copertino* offered, as an example, that a car driving 90 MPH on a racetrack might not constitute even negligent conduct, but racing at 90 MPH near a school while children are entering or leaving would surely be so flagrant as to show a reckless disregard for human life and safety.²¹

Effect of Proposed Changes

CS/HB 1297 amends s. 316.192, F.S., to designate driving a vehicle 40 MPH or more above the lawful or posted speed limit as reckless driving per se. A violation subjects an offender to:

- Up to 90 days in jail, a \$25 to \$500 fine, or both, for a first conviction.
- Up to six months in jail, a \$50 to \$1,000 fine, or both, for a second or subsequent conviction.
- A first degree misdemeanor when a driver causes damage to property or another person.
- A third degree felony when a driver causes serious bodily injury to another person.

The bill amends s. 316.192(2), F.S., to change the threshold speed for which a driver may be cited for a moving violation from 50 to 39 miles per hour on specified streets and highways; punishable under ch. 318, F.S., by an increased fine. Additionally, the bill specifies that a person who exceeds the speed limit by 40 MPH or more must be punished under s. 316.192, F.S., for reckless driving.

The bill provides an effective date of October 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.192, F.S., relating to reckless driving.

Section 2: Amends s. 316.1926, F.S., relating to additional offenses.

Section 3: Reenacts s. 318.14, F.S., relating to noncriminal traffic infractions; exception; procedures.

Section 4: Reenacts s. 318.17, F.S., relating to offenses excepted.

Section 5: Reenacts s. 318.18, F.S., relating to amount of penalties.

Section 6: Reenacts s. 322.0261, F.S., relating to driver improvement course; requirement to maintain driving privileges; failure to complete; department approval of course.

Section 7: Reenacts s. 322.61, F.S., relating to disqualification from operating a commercial motor vehicle.

Section 8: Reenacts s. 337.195, F.S., relating to limits on liability.

Section 9: Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹⁸ S. 316.1926(2), F.S.

¹⁹ *Harris v. State*, 318 So. 3d 645, 647 (Fla. 2d DCA 2021) (citing to *House v. State*, 831 So. 2d 1230, 1232 (Fla. 2d DCA 2002).

²⁰ *Copertino v. State*, 726 So. 2d 330, 332 (Fla. 4th DCA 1999).

²¹ *Id.*

The bill may have an indeterminate positive impact on state revenues by expanding the scope of conduct prohibited as reckless driving, making such conduct punishable by an increased fine.

2. Expenditures:

The bill may have an indeterminate positive impact on prison beds by expanding the scope of conduct prohibited as reckless driving that may be punishable as a third degree felony.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate positive impact on local government revenues by expanding the scope of conduct prohibited as reckless driving, making such conduct punishable by an increased fine.

2. Expenditures:

The bill may have an indeterminate positive impact on jail beds by expanding the scope of conduct prohibited as reckless driving that may be punishable by a jail sentence or as a first degree misdemeanor.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Criminal Justice & Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute differed from the original bill as it specified that driving 40 MPH or more over the lawful or posted speed limit is reckless driving per se.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.