

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 399 Motor Vehicle and Vessel Law Enforcement

SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Criminal Justice & Public Safety Subcommittee, Rodriguez

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Frost	Hall
2) Tourism, Infrastructure & Energy Subcommittee	14 Y, 0 N, As CS	Neuffer	Keating
3) Judiciary Committee			

SUMMARY ANALYSIS

Recently, dangerous events known as “street takeovers” have grown in popularity across the country. These events involve large numbers of vehicles and persons gathering at a predetermined site, typically blocking a large intersection, for vehicles to perform donuts, drifting, burn-outs and other dangerous vehicular maneuvers. Due to the large size of these gatherings, it may be difficult for law enforcement to respond to and control such events.

Florida law prohibits the following racing activities on highways, roadways, or parking lots, unless sanctioned by the proper authorities:

- Driving a motor vehicle, including a motorcycle, in any: race; speed competition or contest; drag race; test of physical endurance; or exhibition of speed or acceleration or for making a speed record;
- Participating in, coordinating, facilitating, or collecting money at any such race, competition, test, or exhibition location;
- Knowingly riding as a passenger in any such race, competition, test, or exhibition; or
- Purposefully stopping or slowing traffic movement for any such race, competition, test, or exhibition.

A racing violation is a first degree misdemeanor, punishable by up to one year in county jail and specified fines. A person may be arrested without a warrant if there is probable cause to believe he or she has committed a racing violation. Additionally, being a spectator at a drag race is punishable as a noncriminal traffic infraction.

CS/HB 399 amends the crimes under s. 316.191(2), F.S., to add additional types of vehicles and additional prohibited conduct including a street takeover, stunt driving as part of a street takeover, and operating a vehicle to film or record prohibited activities or to carry fuel for other vehicles involved in prohibited activities. The bill defines the terms “burnout,” “doughnut,” “drifting,” “motor vehicle,” “street takeover,” “stunt driving,” and “wheelie.” The bill also amends the current definition of “spectator” to include a person who is knowingly present at and views a street takeover and provides that evidence of filming or recording such an event or posting the event on social media are factors to be considered in determining whether a person qualifies as a spectator. Under the bill, a person commits a noncriminal traffic infraction if he or she is found to be a spectator at a race or street takeover.

The bill amends the first degree misdemeanor crimes under s. 316.191(2), F.S., to add drag race, street takeover, and stunt driving as part of a street takeover to each type of prohibited conduct. The bill also adds street takeovers and stunt driving as part of a street takeover to the list of violations which require an offender to pay a \$65 penalty.

Under the bill, if an officer has probable cause to believe that a person has committed a violation relating to a street takeover or stunt driving as part of a street takeover, the officer may arrest the person without a warrant.

The bill also increases the penalty for using certain lights on vehicles and vessels from a noncriminal traffic infraction to a first degree misdemeanor or a third degree felony.

The bill may have a positive indeterminate fiscal impact on state and local government entities receiving funds from violations related to street takeovers and related stunt driving. The bill may have a positive indeterminate impact on prison and jail beds by prohibiting additional conduct punishable as a misdemeanor or felony offense.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0399c.TIE

DATE: 2/15/2022

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Street-racing involves cars, motorcycles, and other motor vehicles engaging in prearranged or spontaneous competitions on roadways. The practice endangers participants, bystanders, and property. In addition to street-racing, another dangerous activity, which has recently grown in popularity across the country, is known as a “street takeover.”¹ Street takeovers occur when large numbers, sometimes hundreds, of cars and occupants gather at a predetermined site, typically a large intersection. Vehicles are then parked in a manner which blocks the intersection to make a space for other cars to perform donuts, drifting, burn-outs and other dangerous vehicular maneuvers.² Due to the large size of these gatherings, law enforcement may experience difficulty responding to and controlling these events because of the time it takes to assemble appropriate law enforcement resources to address the crowd. Typically, by the time law enforcement presence is detected, the vehicles participating in the street takeover flee the location, along with the many bystanders that came to watch the cars.³

Recently, the Dallas Police Department’s speeding and racing task force (task force) made a concerted local effort to crack down on street takeovers and other illegal events. As of September 2021, the task force has arrested 944 people associated with street takeovers.⁴ Because street takeovers are a relatively new phenomenon, specific data related to accidents, injuries, and deaths resulting from these events in Florida is not readily available. However, there are accounts of these events happening throughout the state. In Jacksonville, street takeover participants have acknowledged that their meet-ups have anywhere from 300 to thousands of people in attendance,⁵ and residents nearby indicate that these events are dangerous and often continue until well past midnight.⁶

Racing Offenses

Under Florida law, a “race” may be prearranged or occur spontaneously, consists of a challenge and acceptance or competitive response to the challenge,⁷ and involves one or more motor vehicles in competition to demonstrate the superiority of a vehicle or driver by:

- Attempting to outgain or outdistance another motor vehicle;
- Preventing another motor vehicle from passing;
- Arriving at a given destination before another motor vehicle; or
- Testing the physical stamina or endurance of drivers over a long-distance.⁸

A “drag race” is a specific type of race involving:

¹ Erin Myers, *Car that crashed into Van Nuys building, killing 1, was being followed by police after doing donuts in street takeover*, October 25, 2021, ktl.com, <https://ktla.com/news/local-news/car-that-crashed-into-van-nuys-building-killing-1-was-being-followed-by-police-after-doing-donuts-in-street-takeover/> (last visited Feb. 3, 2022).

² Elizabeth Fuller, *What’s a Street “Takeover” and Why Should You Be Concerned?*, Larchmont Buzz (Sept. 21, 2020), <https://www.larchmontbuzz.com/featured-stories-larchmont-village/whats-a-street-takeover-and-why-you-should-be-concerned/> (last visited Feb. 3, 2022).

³ Thom Taylor, *Street Takeovers Are Turning More Deadly*, MotorBiscuit (Nov. 15, 2021), <https://www.motorbiscuit.com/street-takeovers-turning-more-deadly/> (last visited Feb. 3, 2022).

⁴ Michael Lozano, *Illegal Dallas ‘street takeovers’ feeling pinch from Dallas PD*, October 2, 2021, spectrumlocalnews.com, <https://spectrumlocalnews.com/tx/dallas-fort-worth/news/2021/09/30/dallas-illegal-street-takeovers--feeling-pinch-from-dallas-pd-> (last visited Feb. 3, 2022).

⁵ Corley Peel, *I-TEAM: Local car group speaks following street takeover complaints*, News4Jax (Jan. 17, 2022), <https://www.news4jax.com/news/local/2022/01/16/local-car-group-speaks-following-street-takeover-complaints/> (last visited Feb. 3, 2022).

⁶ Scott Johnson, *I-TEAM: Complaints continue over car groups driving erratically in vacant parking lots*, News4Jax (Jan. 13, 2022), <https://www.news4jax.com/news/local/2022/01/13/i-team-complaints-continue-over-dangerous-driving-in-vacant-parking-lots/> (last visited Feb. 3, 2021).

⁷ *Id.*

⁸ S. 316.191(1)(c), F.S.

- Two⁹ or more motor vehicles driven side-by-side at accelerating speeds in a competitive attempt to outdistance each other; or
- One or more motor vehicles driven over a common selected course, from the same starting point to the same ending point, for the purpose of comparing the relative speed or power of acceleration of such motor vehicle or vehicles within a certain distance or time limit.¹⁰

Florida law prohibits the following racing activities on any highway, roadway, or parking lot, unless sanctioned by the proper authorities:¹¹

- Driving a motor vehicle, including a motorcycle, in a:
 - Race;
 - Speed competition or contest;
 - Drag race;
 - Test of physical endurance;
 - Exhibition of speed or acceleration; or
 - Exhibition for making a speed record;¹²
- Participating in, coordinating, facilitating, or collecting money at a race, competition, test, or exhibition location;
- Knowingly riding as a passenger in a race, competition, test, or exhibition; or
- Purposefully stopping or slowing traffic movement for a race, competition, test, or exhibition.¹³

A racing violation is a first degree misdemeanor,¹⁴ punishable by up to one year in county jail.¹⁵

Additionally, a court must impose the following penalties for a:

- Violation with no prior convictions in the preceding five years, a fine of \$500 up to \$1,000 and a one year driver license suspension.
- Second violation within five years of a prior violation resulting in a conviction, a fine of \$1,000 up to \$3,000 and a two year driver license suspension.
- Third or subsequent violation within five years of a prior violation resulting in a conviction, a fine of \$2,000 up to \$5,000 and a four year driver license suspension.¹⁶

In addition to the criminal penalties provided, a person who commits a racing violation must pay a \$65 penalty. Monies collected pursuant to this additional penalty are remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health to be used to ensure the availability and accessibility of trauma services throughout the state as provided in s. 316.192, F.S.

Section 316.191, F.S., also prohibits a person from being a spectator at a drag race. To be considered a spectator, a person must be knowingly present at and view a drag race, when his or her presence is the result of an affirmative choice to attend or participate in the race. In determining whether or not an individual is a spectator, the following factors must be considered: the relationship between the racer and the individual; evidence of gambling or betting on the outcome of the race; and any other factor that tends to show knowing attendance or participation. Being a spectator at a drag race is a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S.¹⁷ However, current law does not similarly punish being a spectator at a regular race.

Warrantless Arrest

A judge may issue a warrant authorizing a person's arrest for a felony or misdemeanor crime upon finding probable cause that the person committed a crime in the judge's jurisdiction.¹⁸ However, the

⁹ Drag racing most commonly involves two motor vehicles operating side-by-side. National Hot Rod Association, *Basics of Drag Racing*, <http://www.nhra.com/nhra101/basics.aspx> (last visited Feb. 1 2022).

¹⁰ S. 316.191(1)(b), F.S.

¹¹ S. 316.191(7), F.S.

¹² S. 316.191(2), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ S. 775.082, F.S.

¹⁶ S. 316.191(3), F.S.

¹⁷ S. 316.191(4), F.S.

¹⁸ S. 901.02, F.S.

United States Supreme Court has held that the Fourth Amendment to the United States Constitution does not forbid warrantless arrest, even for a misdemeanor offense.¹⁹

In Florida, a law enforcement officer may arrest a person without a warrant under certain statutorily enumerated circumstances,²⁰ such as when:

- An officer reasonably believes a person committed a felony;
- There is probable cause to believe a person has committed certain enumerated misdemeanor offenses,²¹ including a racing violation under s. 316.191(2), F.S.; or
- A person commits a misdemeanor in an officer's presence.
 - In this circumstance, the officer must arrest the person immediately or in fresh pursuit after observing the offense.

Prohibited Use of Certain Lights

Flashing Lights on Vehicles

Section 316.2397, F.S., prohibits flashing lights on vehicles except under specified circumstances, including:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so;
- During periods of extreme low visibility on roadways with a posted speed limit of 55 miles per hour or more; and
- For certain lamps authorized in statute, which may flash, including various types of emergency vehicles.²²

A violation of s. 316.2397, F.S., is currently a noncriminal traffic infraction, punishable as a nonmoving violation.²³

Prohibited Use of Blue Lights on Vehicles and Vessels

Section 843.081, F.S., provides legislative intent indicating that Florida citizens are vulnerable to becoming the victims of criminal acts through the illegal use of blue lights by the criminal elements, and that the Legislature intends to reduce this vulnerability to injury and loss of life and property by prohibiting the use of certain blue lights by any person other than an authorized law enforcement officer.

Under s. 843.081, F.S., a person commits a first degree misdemeanor if he or she uses any flashing or rotating blue lights²⁴ in or on any non-governmentally owned vehicle or vessel, unless he or she is a law enforcement officer employed by a federal, state, county, or city law enforcement agency, or is appointed as a special officer by the Governor under ch. 354, F.S.²⁵

False Personation

Section 843.08, F.S., prohibits the false personation of any of the following law enforcement officers or other specified persons:

- A firefighter;

¹⁹ *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

²⁰ S. 901.15, F.S.

²¹ S. 901.15, F.S., includes other misdemeanor offenses such as battery, criminal mischief or graffiti, an act of domestic violence, an injunction violation, or sexual cyberharassment in the list of offenses where a warrantless arrest is authorized.

²² S. 316.2397(7), F.S.

²³ S. 316.2397(10), F.S.

²⁴ "Flashing or rotating blue light" includes all forms of lights which display a blue light source or which were designed with the intent of displaying a blue light source whether or not such light is actually in use. S. 843.081 (4), F.S.

²⁵ A salesperson, service representative, or other employee of a businesses licensed to sell or repair law enforcement equipment is exempt from criminal liability. S. 843.081(3), F.S.

- Sheriff;
- Officer of the Florida Highway Patrol;
- Officer of the Fish and Wildlife Conservation Commission;
- Fire or arson investigator of the Department of Financial Services;
- Officer of the Department of Financial Services;
- Officer of the Department of Corrections;
- Correctional probation officer;
- Deputy sheriff;
- State attorney or assistant state attorney;
- Statewide prosecutor or assistant statewide prosecutor;
- State attorney investigator;
- Coroner;
- Police officer;
- Lottery special agent or lottery investigator;
- Beverage enforcement agent;
- Watchman (a security officer licensed under ch. 493, F.S.);
- Any member of the Florida Commission on Offender Review and any administrative aide or supervisor employed by the commission;
- Any personnel or representative of the FDLE; or
- A federal law enforcement officer as defined in s. 901.1505, F.S.

A person commits the offense of false personation if he or she falsely assumes or pretends to be any person specified in s. 843.08, F.S., and takes it upon himself or herself to act as such person, or requires any other person to aid or assist him or her in a matter pertaining to the duty of any such specified person.

False personation is generally a third degree felony.²⁶ However, false personation becomes a second degree felony²⁷ if committed during the course of committing another felony offense, unless the offense results in the death or personal injury of another human being, in which case the offense of false personation is a first degree felony.^{28, 29}

Effect of Proposed Changes

CS/HB 399 amends s. 316.191, F.S., to provide the following definitions:

- "Burnout" means a maneuver performed while operating a motor vehicle whereby the motor vehicle is kept stationary, or is in motion, while the wheels are spun, resulting in friction which causes the motor vehicle's tires to heat up and emit smoke.
- "Doughnut" means a maneuver performed while operating a motor vehicle whereby the front or rear of the motor vehicle is rotated around the opposite set of wheels in a continuous motion, resulting in friction which may cause a circular skid-mark pattern of rubber on the driving surface, may cause the motor vehicle's tires to heat up and emit smoke, or both.
- "Drifting" means a maneuver performed while operating a motor vehicle whereby the motor vehicle is steered so that it makes a controlled skid sideways through a turn with the front wheels pointed in a direction opposite to that of the turn.
- "Street takeover" means the use of one or more motor vehicles to block or impede the regular flow of traffic on any portion of a highway, roadway, or parking lot for the purpose of performing any burnout, doughnut, drifting, wheelie, or other stunt driving.
- "Stunt driving" means the use of a motor vehicle to perform or engage in any burnout, doughnut, drifting, wheelie, or other dangerous driving maneuver on a highway, roadway, or parking as part of a street takeover.

²⁶ A third degree felony is punishable by up to five years in prison and a fine of up to \$5,000. Ss. 775.082 and 775.083, F.S.

²⁷ A second degree felony is punishable by up to 15 years in prison and a fine of up to \$10,000. Ss. 775.082 and 775.083, F.S.

²⁸ A first degree felony is punishable by up to 30 years in prison and a fine of up to \$10,000. Ss. 775.082 and 775.083, F.S.

²⁹ False personation under s. 843.08, F.S., is ranked as a level 2 offense on the Criminal Punishment Code offense severity ranking chart. S. 921.0022(3)(b), F.S.

- "Wheelie" means a maneuver performed while operating a motor vehicle whereby a motor vehicle is ridden for a distance with the front wheel or wheels raised off the driving surface.

The bill amends the first degree misdemeanor crimes under s. 316.191(2), F.S., to add drag race, street takeover, and stunt driving to each type of prohibited conduct. Additionally, under the bill a person commits a first degree misdemeanor offense if he or she:

- Purposely interrupts the movement of pedestrian traffic for any such prohibited event; or
- Operates a motor vehicle for the purpose of:
 - Filming or recording the activities of participants in any race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; or
 - Carrying any amount of fuel intended to be used for fueling a motor vehicle involved in any race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition.

The bill amends the current definition of "spectator" to include a person who is knowingly present at and views a street takeover and provides that evidence of filming or recording such an event or posting the event on social media are factors to be considered in determining whether a person qualifies as a spectator. The bill also amends the noncriminal traffic infraction for being a spectator at a drag race to include a prohibition on being a spectator at a race or street takeover.

The bill adds street takeovers and stunt driving to the list of violations requiring an offender to pay a \$65 penalty in addition to any other penalty, which is remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health.

Under the bill, if an officer has probable cause to believe that a person has committed a violation relating to a street takeover or stunt driving, the officer may arrest the person without a warrant. An officer may already arrest a person without a warrant for current racing offenses.

The bill increases the penalty for using flashing lights or other lights on a vehicle in violation of s. 316.2397, F.S., from a noncriminal traffic infraction to a first degree misdemeanor. The bill also amends the crime of false personation to provide that a person who takes upon himself or herself to act as an officer or person listed in s. 843.08, F.S., including by using prohibited flashing lights in violation of s. 316.2397, F.S., or prohibited blue lights in violation of s. 843.081, F.S., commits an offense, which is punishable as a third degree felony.³⁰

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

B. SECTION DIRECTORY:

Section 1: Amends s. 316.191, F.S., relating to racing on highways.

Section 2: Amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

Section 3: Amends s. 318.18, F.S., relating to amount of penalties.

Section 4: Reenacts s. 316.027, F.S., relating to crash involving death or personal injuries.

Section 5: Reenacts s. 322.0261, F.S., relating to driver improvement course; requirement to maintain driving privileges; failure to complete; department approval of course.

Section 6: Reenacts s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 7: Amends s. 843.08, F.S., relating to false personation.

Section 8: Provides an effective date of July 1, 2022.

³⁰ Or may be punishable as a: second degree felony if committed during the course of committing another felony offense; or as a first degree felony if the offense results in the death or personal injury of another human being. S. 843.08, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive indeterminate impact on state entities which receive fines and fees collected from the new conduct which, under the bill, is considered a misdemeanor crime related to street takeovers and stunt driving as part of a street takeover.

2. Expenditures:

The bill may have a positive indeterminate impact on prison beds by prohibiting additional conduct punishable as a felony offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive indeterminate impact on local government entities which may receive monies collected from the new conduct considered a noncriminal traffic infraction for being a spectator at a race or street takeover.

The bill may have a positive indeterminate impact on The Emergency Medical Services Trust Fund of the Department of Health by adding street takeovers and stunt driving to the list of violations which require a \$65 penalty, in addition to any other penalty, under s. 318.18(20), F.S.

2. Expenditures:

The bill may have a positive indeterminate impact on the number of jail beds by creating new conduct punishable as a misdemeanor crime relating to racing, street takeovers, and related stunt driving.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Criminal Justice & Public Safety Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided definitions for the terms “burnout,” “doughnut,” “drifting,” “motor vehicle,” “stunt driving,” and “wheelie.”
- Replaced the term “takeover ride” with the term “street takeover” and amended the definition of the term.
- Made other technical, clarifying, and conforming changes.

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

On February 15, 2022, the Tourism, Infrastructure & Energy Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibits stunt driving only if it takes place as part of a street takeover.

This analysis is drafted to the committee substitute as passed by the Tourism, Infrastructure & Energy Subcommittee.