

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Transportation

BILL: SB 476

INTRODUCER: Senators Pizzo and Book

SUBJECT: Aggressive Careless Driving

DATE: February 7, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 476 provides the aggressive careless driving statute may be cited as the “Anthony Reznik Act,” and provides penalties for the offense of aggressive careless driving. It further revises the definition of “aggressive careless driving” by adding the following acts to those already listed, requiring two or more of those listed to occur simultaneously or in succession for the act of aggressive careless driving:

- Operating a motor vehicle while texting; and
- Operating a motor vehicle in violation of driver license restrictions.

The bill provides that a person who commits aggressive careless driving:

- Must be cited for a moving violation.
- And who, by reason of such operation, causes:
 - Damage to the property or person of another commits a misdemeanor of the second degree.
 - Serious bodily injury to another person commits a misdemeanor of the first degree.
 - Death to another person commits a felony of the third degree.

The bill ranks aggressive careless driving resulting in death on the offense severity ranking chart.

The bill may have an indeterminate positive fiscal impact to state and local government due to the collection of fines and fees for aggressive careless driving. See Section V. Fiscal Impact Statement.

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

II. Present Situation:

Anthony Reznik

On February 10, 2021, a motor vehicle was traveling on Sunny Isles Beach Boulevard near Highway A-1-A. There is a traffic light for vehicles to stop for pedestrians crossing the roadway on the crosswalk. Eleven year old Anthony Reznik had a green light to cross the road and began to make his way across the lanes of traffic in the marked crosswalk. There were three lanes of traffic that he needed to cross to get to the other side of the road. Cars were stopped for the first two of the lanes of the roadway. However, in the third lane, there were no cars stopped for the red light. As the driver approached the stop bar of that third lane, she failed to stop. When she went through the red light, the vehicle she was driving struck Anthony. Anthony was rushed to the hospital; however, his life could not be saved. He died after being on life support for about two weeks.¹

After the crash, the driver stopped her car and remained at the scene. She cooperated with the investigation and provided a recorded interview to the police. In that interview, she stated that the traffic light was green for her. The police did not detect any signs of impairment so there was no legal basis to compel her to provide a sample of blood or urine for toxicology testing. Further, the police investigation indicated that she was not driving at an excessively high rate of speed at the time of the collision. No evidence was found to prove that she consciously disregarded the traffic control device.²

The Miami-Dade Police Department Traffic Homicide Unit was called to handle the fatal crash investigation. The investigators took photographs and crash measurements, conducted witness interviews, reconstructed the collision, and reviewed video surveillance footage of the crash. After factoring all the evidence gathered in this case, it was their opinion, as well as the Assistant State Attorney's, that there was insufficient evidence to charge the driver with any felony offenses in conjunction with this crash. There was no evidence that she was driving under the influence of drugs/alcohol, and she did not flee the scene. Consequently, she could not be charged with DUI Manslaughter or Leaving the Scene of a Deadly Crash.³

Moreover, the charge of Vehicular Homicide could not be sustained in this matter, either. In order to prove the crime of Vehicular Homicide, the State would have to prove that the driver was driving recklessly. The distinction between reckless driving (the basis for criminal vehicular homicide charges) and careless driving (which cannot be the basis of a criminal offense but can result in the issuance of traffic tickets) has been addressed in a multitude of cases with similar outcomes.⁴ In other words, even when an innocent person is killed in a traffic crash, the law

¹ Janine Stanwood, *Driver won't face criminal charges after running red light, striking and killing 11-year-old in Sunny Isles*, Local 10 News, September 14, 2021, available at <https://www.local10.com/news/local/2021/09/15/driver-wont-face-criminal-charges-after-running-red-light-striking-and-killing-11-year-old-in-sunny-isles/> (last visited February 4, 2022); and Memorandum to File from Assistant State Attorney Laura Adams, (September 10, 2021) (on file with the Senate Committee on Transportation).

² Memorandum to File from Assistant State Attorney Laura Adams, (September 10, 2021) (on file with the Senate Committee on Transportation).

³ *Ibid.*

⁴ *Luzardo v. State*, 147 So.3d 1083 (Fla. 3d D.C.A. 2014), the court noted that "By definition, the crime of vehicular homicide requires proof of the elements of reckless driving... Reckless driving, in turn, is defined as driving 'in willful or

recognizes that accidents can happen, and people should not go to jail or prison for mere mistakes. Unless the at-fault driver can be shown to have taken deliberate action knowing that it was likely that death or serious injury would likely result, the charge of Vehicular Homicide cannot be proven.⁵

Road Rage and Aggressive Driving

According to the National Highway Traffic Safety Administration (NHTSA), “aggressive driving” is defined as when an individual commits a combination of moving traffic offenses so as to endanger other persons or property.⁶ Occasionally, aggressive driving transforms into confrontation, physical assault, and even murder. A study on road deaths and injuries shows that:

road death and injury rates are the result, to a considerable extent, of the expression of aggressive behavior. . . . Those societies with the greatest amount of violence and aggression in their structure will show this by externalizing some of this violence in the form of dangerous and aggressive driving. . . .⁷

According to NHTSA, “road rage” is the label that has emerged to describe the angry and violent behaviors at the extreme of the aggressive driving continuum.⁸

The willful intent to injure other individuals or to cause damage, although directed at a specific target, presents an immediate danger to all in the vicinity of those engaged in acts of road rage. There are numerous accounts in which road rage incidents inadvertently involve drivers or pedestrians not targeted in the incident.

Aggressive driving maneuvers, such as tailgating and speeding, can also be seen as the result of the driving environment, and they are also connected with the issue of congestion.⁹ Studies show most incidents happen between the hours of four and six o’clock in the evening, times in which traffic congestion is more than likely a factor or the primary cause of an accident. In addition,

wanton disregard for the safety of persons or property. . . .” The court goes on to note that “willful” means “intentional, knowing and purposeful” conduct and that “wanton” means “with a conscious and intentional indifference to consequences and with the knowledge that damage is likely to be done to persons or property.”; *Damoah v. State*, 189 So.3d 316 (Fla. 4th D.C.A. 2016), noted that “The law differentiates between negligent driving conduct, which exposes a wrongdoer to civil liability, and criminal driving conduct, which subjects a person to incarceration and other criminal sanctions. Case law strictly construes criminal driving statutes to prevent the net of the criminal law from sweeping so broadly that it snares all conduct, both criminal and negligent.” The *Damoah* court went on to note that “Consistent with this view, the Florida Supreme Court has held “statutes criminalizing simple negligence to be unconstitutional.” *State v. Smith*, 638 So.2d 509, 510 (Fla.1994). “[U]nintentional conduct [] not generated by culpable negligence” will not support criminal liability. *State v. Hamilton*, 388 So.2d 561, 563 (Fla.1980); and *Berubev. State*, 6 So.3d 624 (Fla. 5th D.C.A. 2008) found that “What is missing from the State’s proof is evidence that Berubev, in an intentional, knowing and purposeful manner, made an improper left turn with a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.”

⁵ *Supra* FN 2.

⁶ National Highway Traffic Safety Administration, *Aggressive Driving* <https://nhtsa.dr.dell.nhtsa.gov/Driving-Safety/Aggressive-Driving> (last visited February 4, 2022).

⁷ Whitlock, F.A., *Death on the Road: A Study in Social Violence*. London (Tavistock Publications 1971).

⁸ National Highway Traffic Safety Administration <https://one.nhtsa.gov/people/injury/research/aggdrivingenf/pages/introduction.html> (last visited February 4, 2022).

⁹ Dominic Connell and Matthew Joint, *Driver Aggression*, Road Safety Unit Group Public Policy (Nov. 1996), available at <https://rosap.ntl.bts.gov/view/dot/40587> (last visited February 4, 2022).

there is strong evidence correlating the number of lane change maneuvers to accidents, and speed to accidents. Some researchers have theorized the root cause of these aggressive behaviors is passive-aggressive driving, i.e., the failure to move to the right from a left lane of a multi-lane highway when being overtaken by faster traffic. The theory contends that because slower moving traffic often refuses to yield to vehicles wishing to pass, those faster moving vehicles resort to aggressive driving such as “bobbing and weaving” from lane to lane.

Current Florida law in relation to “driving on right side of roadway” does require vehicles moving at a lesser rate of speed to drive in the right hand lane as soon as it is reasonable to proceed into that lane. Exceptions and exemptions include: when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.¹⁰ Violations of this law are noncriminal offenses.

Another important distinction is that aggressive driving is considered a traffic violation, while road rage may result in criminal offenses. Currently 15 states have laws pertaining to aggressive driving as described above (including Florida).¹¹ Most, if not all acts under the umbrella of what is considered road rage, are labeled criminal offenses with applicable punishments. Road rage, if not accompanied by some other type of violation, is not considered a punishable crime in statute. Some crimes considered to be an act of road rage if carried out while driving include: *Criminal Damage, Using Threatening, Abusive, or Insulting Words or Behavior* (thereby causing fear or provocation), *Wounding with Intent, Common Assault, Assault with a Deadly Weapon, Murder, Manslaughter, and Vehicular Homicide*.

Florida Aggressive Driving Laws

Section 316.1923, F.S., describes, “aggressive careless driving” as committing two or more of the following acts simultaneously or in succession:

- Exceeding the posted speed as defined in s. 322.27(3)(d)5.b., F.S.;
- Unsafely or improperly changing lanes as defined in s. 316.085, F.S.;
- Following another vehicle too closely as defined in s. 316.0895(1), F.S.;
- Failing to yield the right-of-way as defined in ss. 316.079, 316.0815, or 316.123, F.S.;
- Improperly passing as defined in ss. 316.083, 316.084, or 316.085, F.S.; or
- Violating traffic control and signal devices as defined in ss. 316.074 and 316.075, F.S.

These violations carry separate penalties for each offense. Section 316.1923, F.S., does not, however, provide for any penalties to be administered for the act of aggressive driving itself. Law enforcement officers, by law are to check off a box, which is included on a ticket or an accident report form, when the officer believes the traffic violation or crash was due to aggressive careless driving.¹² The information is recorded and used by the Department of Highway Safety and Motor Vehicles (DHSMV).

¹⁰ Sections 316.081(1), (2), and (3), F.S.

¹¹ National Conference of State Legislatures, *Aggressive Driving and Speed* <https://www.ncsl.org/research/transportation/aggressive-driving-and-speed.aspx> (last visited February 4, 2022).

¹² Section 316.650(1), F.S.

Current law provides that drivers overtaking other drivers must use the proper signal, and those being overtaken must yield the right of way to the overtaking vehicle. In addition, vehicles being overtaken may not increase speed until the attempted pass is complete or it is reasonably safe to do so.¹³ Some of the infractions may require a mandatory court hearing.¹⁴

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹⁵ (Code) as Florida's "primary sentencing policy."¹⁶ The primary purpose of the Code is to "punish the offender."¹⁷ "Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment."¹⁸ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹⁹ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may be added or multiplied for other factors such as victim injury or the commission of certain drug trafficking offenses. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence *in prison* months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.²⁰

Absent mitigation,²¹ the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to, and including, the maximum sentence provided in s. 775.082, F.S.²² However, if the offender's offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.²³ Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.²⁴

¹³ Section 316.083, F.S.

¹⁴ Section 318.19, F.S.

¹⁵ Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

¹⁶ See chs. 97-194 and 98-204, L.O.F.

¹⁷ Section 921.002(1)(b), F.S.

¹⁸ *Ibid.*

¹⁹ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

²⁰ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

²¹ The court may "mitigate" (reduce) the scored lowest permissible sentence if the court finds a mitigating circumstance. Sections 921.002(1)(g) and (3), 921.0026(1), and 921.00265(1) and (2), F.S. Section 921.0026(2), F.S., provides a list of mitigating circumstances. This type of sentence is often referred to as a "downward departure" sentence.

²² Sections 921.002(1)(g) and 921.0024(2), F.S. The sentencing court may impose sentences concurrently or consecutively. A prison sentence must exceed 1 year. If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

²³ Fla. R. Crim. P. 3.704(d)(26).

²⁴ See e.g., s. 775.082(10), F.S. (diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections' prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a post adjudicatory treatment-based drug court program for certain nonviolent felony offenders).

III. Effect of Proposed Changes:

The bill amends s. 316.1923, F.S., to provide it may be cited as the “Anthony Reznik Act” and to provide penalties for the offense of aggressive careless driving. It further revises the definition of “aggressive careless driving” by adding the following acts to those already listed, requiring two or more of those listed to occur simultaneously or in succession for the act of aggressive careless driving:

- Operating a motor vehicle while texting as defined in s. 316.305(3)(a), F.S.; and
- Operating a motor vehicle in violation of driver license restrictions imposed under ss. 322.16(1)(a) or (b), F.S., such as restrictions suitable to the licensee’s driving ability with respect to the type of special mechanical control devices required on a motor vehicle and restrictions on use of the license with respect to time and purpose of use.

The bill provides that a person who commits aggressive careless driving:

- Must be cited for a moving violation, punishable as provided in chapter 318.²⁵
- And who, by reason of such operation, causes:
 - Damage to the property or person of another commits a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.²⁶
 - Serious bodily injury to another person commits a misdemeanor of the first degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.²⁷ As used the term “serious bodily injury” means an injury to another 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.
 - Death to another person commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.²⁸

The bill amends s. 921.0022, F.S., to rank aggressive careless driving resulting in death second on the offense severity level six offense severity ranking chart.

The DHSMV indicates that generally, most crashes result in either property damage, injury, or death of another. The practical effect of the bill is that a large percentage of vehicle crashes may likely become criminal in nature.²⁹ For example, consider a careless driver who, traveling at or below the speed limit, fails to stop at a stop sign and, in doing so, crashes into another vehicle traveling on an intersecting roadway with the right-of-way. The at-fault driver has committed

²⁵ Section 318.18(3)(a), F.S., provides penalties for noncriminal traffic infractions, and except as otherwise provided, the fine for a moving violation not requiring a mandatory appearance is \$60; however, other penalties and fees may also be imposed; s. 322.27(3), F.S., the DHSMV is authorized to suspend the license of any person upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violating motor vehicle laws or ordinances amounting to 12 or more points as determined by the point system, and the suspension may not exceed a period of 1 year; and s. 322.27(7), F.S., unless otherwise specified in law, the points for a moving violation are 3 points.

²⁶ Section 775.082(4)(b), F.S., term of imprisonment not exceeding 60 days; and s. 775.083(1)(e), F.S., a fine not to exceed \$500.

²⁷ Section 775.082(4)(a), F.S., term of imprisonment not exceeding 1 year; and s. 775.083(1)(d), F.S., a fine not to exceed \$1,000.

²⁸ Section 775.082(3)(e), F.S., term of imprisonment not exceeding 5 years; and s. 775.083(1)(c), F.S., a fine not to exceed \$5,000.

²⁹ Department of Highway Safety and Motor Vehicles, *2022 Legislative Bill Analysis for SB 476*, (January 13, 2022), p. 4 (on file in the Senate Committee on Transportation).

two of the enumerated acts simultaneously or in succession, violating a traffic control device and failure to yield the right-of-way. Therefore, the at-fault driver would now be subjected to criminal penalties under the bill for aggressive careless driving. At a minimum, the at-fault driver would be charged with a second degree misdemeanor for aggressive careless driving causing property damage or injury to another. If the crash resulted in death, the at-fault driver would be charged with a third degree felony. Moreover, the offense of aggressive careless driving resulting in death would be punishable as a level six offense and subject the driver to a possible prison sentence.³⁰

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill criminalizes aggressive careless driving resulting in damage to property or person, serious bodily injury, or death. *Damoah v. State*, 189 So.3d 316 (Fla. 4th D.C.A. 2016), noted that “The law differentiates between negligent driving conduct, which exposes a wrongdoer to civil liability, and criminal driving conduct, which subjects a person to incarceration and other criminal sanctions. Case law strictly construes criminal driving statutes to prevent the net of the criminal law from sweeping so broadly that it snares all conduct, both criminal and negligent.” The *Damoah* court went on to note that “Consistent with this view, the Florida Supreme Court has held “statutes criminalizing simple negligence to be unconstitutional.” *State v. Smith*, 638 So.2d 509, 510 (Fla.1994). “[U]nintentional conduct [] not generated by culpable negligence” will not support criminal liability. *State v. Hamilton*, 388 So.2d 561, 563 (Fla.1980).

³⁰ *Ibid*, p. 5.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may have a negative fiscal impact on individuals receiving a uniform traffic citation, or being charged with a misdemeanor or felony, for the aggressive careless driving.

C. Government Sector Impact:

The bill may have an indeterminate positive fiscal impact to state and local government due to the collection of fines and fees for aggressive careless driving.

The bill may have an indeterminate prison bed impact due to the criminalization of aggressive careless driving resulting in damage to property or person, serious bodily injury, or death.

The bill may have an indeterminate negative fiscal impact to the DHSMV's operational resources due to the need for programming to create four new disposition codes in the Motorist Maintenance Application and Citation Processing and to add four new violation codes to the Uniform Traffic Citation Annual Statistic Report.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 316.1923, F.S., and the bill do not require any sort of intent to elevate the enumerated noncriminal violations to a criminal violation. Rather, it is the unintended result of a careless behavior that elevates the noncriminal violation to a criminal violation. Because the bill does not require any sort of intent behind the act, it is likely that persons who lack intent or would not ordinarily be characterized as aggressive drivers will find themselves facing criminal penalties.³²

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.1923 and 921.0022.

³¹ *Ibid.*

³² *Ibid.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
