

STORAGE NAME: h3257s1.cp

DATE: February 18, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3257

RELATING TO: Driving Under the Influence

SPONSOR(S): Rep.'s Sindler, Casey, Feeney and others.

COMPANION BILL(S): SB 554

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 9 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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SUMMARY:

Under current law, a third Driving Under the Influence (D.U.I.) conviction is punished by up to 1-year in jail and a fine of up to \$2,500. **The bill reclassifies a third D.U.I. conviction as a 3rd-degree felony, punishable by up to 5-years in prison and a fine of up to \$5,000.**

Under current law, a person driving under the influence of a controlled substance, to the extent that their normal faculties are impaired by that substance, may be convicted of D.U.I. **The bill expands the D.U.I. law to allow for conviction of D.U.I. for any amount of controlled substance in the driver's blood or urine, without regard to whether it impaired the person's normal faculties.**

Under current law, any statement made at the scene of an accident, about the accident, is protected by the accident report privilege. This means the statement may not be used against the person in a civil or criminal proceeding. **The bill repeals the accident report privilege.**

The bill has an effective date of October 1, 1998.

I. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

D.U.I. In Florida

A D.U.I. conviction requires proof of the following elements:

- ▶ The person was driving or in actual physical control of a vehicle, **AND**
- ▶ The person's Blood Alcohol Level (BAL) is greater than .08%, **OR**
- ▶ The person is under the influence of **alcohol** or a **controlled substance** to the extent that their normal faculties are impaired.

Related D.U.I. Charges

Florida's D.U.I. penalties are designed to address four related types of criminal conduct. The penalties vary for each as follows:

- 1) **Simple D.U.I.** -- For a first offense with no property damage or injury involved, the maximum penalty is a \$500 fine and 6-months in jail.
- 2) **D.U.I. With Property Damage** -- In the event of an accident, the maximum penalty is a \$1,000 fine and 9-months in jail.
- 3) **D.U.I. With Serious Bodily Injury** -- In the event of an accident resulting in serious bodily injury to another, the offense is reclassified as a 3rd-degree felony (maximum \$5,000 fine & 5-years in prison).
- 4) **D.U.I. Manslaughter** -- In the event of an accident caused by the offender which results in a death, the offense is reclassified as a 2nd-degree felony (maximum \$10,000 fine & 15-years in prison).

Reclassification for Simple D.U.I.

Even Simple D.U.I., which results in no property damage or injury to others is reclassified depending on the number of times an offender has already been convicted. The penalties for Driving Under the Influence in Florida, for successive convictions, as found in Section 316.193, F.S., are as follows:

DRIVING UNDER THE INFLUENCE

	Incarceration (maximum)	Incarceration Over .20 BAL*	Fine	Fine Over .20 BAL*
1st Offense	6 months jail	9 months jail	\$250 - \$500	\$500 - \$1,000
2nd Offense	9 months jail	12 months jail	\$500 - \$1,000	\$1,000 - \$2,000
3rd Offense	12 months jail	12 months jail	\$1,000 - \$2,500	\$2,000 - \$5,000
4th Offense (felony)	5 years prison	5 years prison	\$1,000 - \$5,000	\$1,000 - \$5,000

* **BAL** -- Blood Alcohol Content

D.U.I. For Controlled Substances

Under current law, a person may be convicted of D.U.I. for driving under the influence of a controlled substance, the same as if he or she were driving under the influence of alcohol, if the influence of the controlled substance impaired the person's "normal faculties."

Unlike D.U.I. for alcohol, there is no easy test to determine whether a driver has ingested a controlled substance or exactly how much he has ingested. Consequently, the D.U.I. law contains no threshold level of consumption from which impairment may be inferred like there is for alcohol (.08 BAL).

- * Nonetheless, a person may be convicted for D.U.I. on evidence that the person's normal faculties are impaired and that they were under the influence of a controlled substance.
- * Section. 316.1932, F.S. (Implied Consent), specifically requires drivers to submit to a urine test for the presence of a chemical substance listed in s. 877.011 or a controlled substance as listed in s. 893.13, F.S., or face the same suspension of their driver's license as they would face for failing to submit to the breath test.

Mandatory Minimums For Repeat D.U.I. Offenders

A first D.U.I. offense will usually be punished by probation. However, repeat D.U.I. offenses carry mandatory jail sentences, as follows:

- ▶ 2nd D.U.I. (within 5-years) -- **mandatory 10-days in jail**
- ▶ 3rd D.U.I. (within 10-year) -- **mandatory 30-days in jail**

The Accident Report Privilege

Section 316.066, F.S. (Written Reports Of Accidents), requires persons who are involved in vehicular accidents in which a person is injured or which results in damages in excess of \$500 to file a written report of the accident. Ordinarily, a person is relieved of this duty

because the report is not required when an investigating officer files the required accident investigation report. In any event, s. 316.066(4) provides:

(4) Except as specified in this subsection, each accident report made by a person involved in an accident and any statement made by such person to a law enforcement officer for the purpose of completing an accident report required by this section shall be without prejudice to the individual so reporting. No such report or statement shall be used as evidence in any trial, civil or criminal.

Duty To Give Information

Section 316.062, F.S., requires any driver who has been involved in an accident to stop and provide his name, address, and the registration number of his vehicle. One is also required to exhibit one's driver's license to the other party and the investigating police officer, if available. However, this statute also makes clear there is no affirmative duty to assist the investigating police officer by making statements about the cause of the accident:

(3) The statutory duty of a person to make a report or give information to a law enforcement officer making a written report relating to an accident shall not be construed as extending to information which would violate the privilege of such person against self-incrimination.

B. EFFECT OF PROPOSED CHANGES:

Increased Penalty for Third Conviction

Under current law, four D.U.I. convictions are required for felony status. Under the bill, an offender's third D.U.I. conviction (and all subsequent convictions) will be punished as a felony, as follows:

DRIVING UNDER THE INFLUENCE (D.U.I.)

	Incarceration (maximum)	Incarceration Over .20 BAL*	Fine	Fine Over .20 BAL*
1st Offense	6 months jail	9 months jail	\$250 - \$500	\$500 - \$1,000
2nd Offense	9 months jail	12 months jail	\$500 - \$1,000	\$1,000 - \$2,000
3rd Offense (felony)**	5 years prison	5 years prison	\$1,000 - \$2,500	\$2,000 - \$5,000
4th Offense (felony)	same	same	same	same

* **BAL** -- Blood Alcohol Content

- ** The new third-degree felony offense for a 3rd D.U.I. conviction will, also, be ranked as a Level Six offense in the Offense Severity Ranking Chart, the same as a fourth conviction under current law. See, s. 921.0022, F.S.

Mandatory Minimums For Repeat D.U.I. Offenders

The bill does not change any of the mandatory minimum penalties for D.U.I. offenses.

D.U.I. Broadened To Include Any Amount Of Controlled Substances

Under the bill, a D.U.I. conviction may be obtained via a new, alternative, element of proof, as follows:

- ▶ **If there is any amount of a controlled substance present in the person's blood or urine** (whether or not the person is under the influence to the extent that their normal faculties are impaired).

Thus, under the bill, a person may be convicted of D.U.I. for driving a car if there is any amount of a controlled substance in their blood or urine, even if the amount is so small that they are unaffected by it.

- ▶ The bill specifically provides a defense to this charge if the controlled substance is present pursuant to a legitimate pharmaceutical prescription.

The Accident Report Privilege Repealed

The bill s. 316.066, F.S., (Written Reports Of Accidents) repeals the accident report privilege, specifically declaring that any statement made in connection with an accident investigation may be used against the person reporting the accident. Hence, any statement made pursuant to the s 316.066 requirement to file a written report may be used against the person making the statement, in a civil or criminal proceeding. A person in the custody of law enforcement would still be entitled to his or her Miranda rights such as the right to remain silent and the right to an attorney. An officer must read Miranda rights to a person in custody in order to use that person's statements. See, Miranda v. Arizona, 384 U.S. 436 (1966).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 316.193

E. SECTION-BY-SECTION RESEARCH:

Section 1: Enhances the penalties for a third D.U.I. conviction.

Section 2: Incorporates the enhanced penalty by reference to the offense severity ranking chart (s. 921.0022, F.S.)

II. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

At publication of this report, the Criminal Justice Estimating Conference had not met on this bill.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the bill is a criminal law, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

IV. COMMENTS:

Reclassification of Other Offenses

The law already makes a third conviction for driving while license suspended (D.W.L.S.), a felony. There is no reason why a third conviction for a more serious offense such as D.U.I. should not also be made a felony, as well. However, an offender who commits a 1st D.W.L.S. will often receive a withhold of adjudication which does not count as a conviction. Therefore, a person often has to plea to 3 D.W.L.S.'s before the fourth is charged as a felony. On the other hand, a judge is required to impose an adjudication of guilt for all D.U.I. sentences.

D.U.I. Without Impairment

The bill broadens the law to criminalize driving a vehicle after ingesting any amount of a controlled substance, regardless of whether the amount is so slight that the person's normal faculties are not impaired. In fact, a person could be found guilty because of drugs consumed weeks earlier that can be detected after the arrest. There is no constitutional requirement that driving under the influence laws be limited to those circumstances in which the influence is so great that the person's normal faculties are impaired.

Constitutional guarantees of due process are satisfied as long as the law is rationally related to achieving a legitimate state objective. See, State v. Lite, 592 So. 2d 1202 (4th DCA 1992), citing, Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla.1974). In this case, there is no question that the state has a legitimate objective in maintaining the safety of its streets and highways. This law is rationally related to that objective because, logically, it attempts to remove "drugged drivers" from the road, some of which are influenced to the extent that their normal faculties are impaired. This is enough to satisfy due process requirements. The fact that the law may, also, capture some "drugged drivers" who are not actually impaired by the

controlled substance they ingested is irrelevant to the analysis since driving is not a fundamental right. The supreme courts of other states have upheld similar laws. See, People v. Fate, 836 N.E. 2d 549 (Ill.1994); Stevenson v. State, 453 So. 2d 18 (Ga. 1995). Moreover, ingestion of controlled substances is illegal conduct which is afforded no protection in state or federal constitutions.

Repeal Of the Accident Report Privilege

The bill repeals the accident report privilege, yet s. 316.066 requires motorists to provide written reports where the investigating officer does not complete the accident investigation report, himself. Clearly, no statute can force a citizen to waive his Fifth Amendment right to remain silent in the course of a criminal investigation. See, State v. Marshall, 695 So. 2d 686 (Fla. 1997). Consequently, along with repealing the accident report privilege, the bill raises questions as to whether a person may be compelled to file a written report, as required per s. 316.066, F.S., without providing that the report may not be used against the person.

It is more common, however, for the investigating officer to complete the accident investigation report, himself, as envisioned by subsection (3) of section 316.066, and in this situation the motorist is not required to give a statement to police. See, also, 316.062, F.S. Because the bill repeals the privilege, any statement made to police, even if only to explain what happened or who was driving, may be used against that person in a civil or criminal proceeding.

V. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The bill passed favorably through the Crime & Punishment Committee on February 17, 1998 with four amendments. The bill was made into a committee substitute.

VI. **SIGNATURES:**

COMMITTEE ON CRIME AND PUNISHMENT:

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