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DATE: March 17, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3511

RELATING TO: Drivers License Revocations

SPONSOR(S): Committee on Law Enforcement and Public Safety and
Representative Constantine

COMPANION BILL(S): SB 1218(s), SB 0476(c), SB 0606(c), SB 0774(c)

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

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 6 NAYS 0
 - (2)
 - (3)
 - (4)
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I. SUMMARY:

This bill adds (1)murder resulting from the operation of a motor vehicle, (2)vehicular homicide, and (3)driving without a license involving death, to the list of offenses which result in a mandatory, permanent driver license revocation.

If a permanent revocation occurs as a result of: (1) manslaughter resulting from the operation of a motor vehicle, (2)vehicular homicide, or (3)driving without a license involving death, the defendant may seek authorization from the court to petition the Department of Highway Safety and Motor Vehicles for reinstatement (provided that five years have elapsed from the date of revocation).

The court will then determine if the defendant has any of the specified prior convictions which preclude such authorization. The court may authorize a defendant with four or more DUI convictions to petition the department if three or more of the previous convictions have not occurred in the past five years, and the individual is not considered a significant risk to public safety. If a defendant is authorized to petition the department, but has been incarcerated for any driving offense during the five years prior to the petition, the license will not be reinstated.

Anyone convicted of driving with a permanently revoked license will be charged with a third-degree felony, and sentenced to a minimum of two years imprisonment.

The bill provides for the period of suspension or revocation for incarcerated offenders to commence upon their release from incarceration, and provides for notification of the defendant's release date to be sent to the department by the correctional facility.

The bill provides an effective date of October 1, of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

“Suspension” vs. “Revocation”

If the department “suspends” a license, it can not be suspended for more than one year. However, if the department “revokes” a license, the department shall not grant a new license until the expiration of at least one calander year. **S. 322.28(1), F.S.**

Current Offenses Which Result in Mandatory Driver License Revocation:

There are currently eight offenses under **s. 322.26, F.S.**, which result in a mandatory driver license revocation:

- (1) Manslaughter resulting from the operation of a motor vehicle.
- (2) Driving a motor vehicle or being in actual physical control thereof, or entering a plea of nolo contendere, said plea being accepted by the court and said court entering a fine or sentence to a charge of driving, while under the influence of alcoholic beverages or a controlled substance under Chapter 893, or being in actual physical control of a motor vehicle while under the influence of alcoholic beverages or a controlled substance under Chapter 893. In any case where DUI manslaughter occurs, the revocation of the license or driving privilege shall be permanent, except as provided for in s. 322.271(4), F.S.
- (3) Any felony in the commission of which a motor vehicle is used.
- (4) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.
- (5) Perjury or the making of a false affidavit or statement under oath to the department under this law, or under any other law relating to the ownership or operation of motor vehicles.
- (6) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed with a period of 12 months.
- (7) Any violation of the law against lewdness, assignation, and prostitution where such violation has been effected through the use of a motor vehicle.
- (8) Conviction in any court having jurisdiction over offenses committed under this chapter or any other law of this state regulating the operation of a motor vehicle on the highways, upon direction of the court, when the court feels the seriousness of the offense and the circumstances surrounding the conviction warrant the revocation of the licensee’s driving privilege.

Thus, under (8), a court may already revoke the driving privilege of anyone convicted of murder resulting from the operation of a motor vehicle, vehicular homicide, or any other serious crime.

Definitions/Case Law Relating to Mandatory Driver License Revocation

The word "operating" as used in the phrase "operating a motor vehicle" is not limited to times when a vehicle is in a state of motion, but includes ordinary stops which are fairly incidental to its operation. Werhan v. State, 673 So.2d 550 (Fla.App.1 Dist. 1996).

Murder is defined in **s. 782.04, F.S.**, as "the unlawful killing of another human being when perpetrated from a premeditated design to effect the death of the person killed or any human being, or during the commission of those specified acts enumerated in the statute." There are instances in which this occurs as a result of the "operation of a motor vehicle." For example, in Gordon v. State, a man was convicted of second-degree murder when, after causing a wreck and attempting to flee the accident, he ran the lady over with his vehicle, and killed her. 457 So.2d 1095 (Fla. App. 5 Dist. 1984).

The felony murder rule states that a person can be convicted for a murder "he in no way intended, based on his criminal intent in committing the felony." Armenia v. State, 497 So.2d 638 (Fla. 1986).

Manslaughter is defined in **s. 782.07, F.S.**, as "the killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification and in cases in which such killing shall not be excusable homicide or murder, according to the provision of this chapter, shall be deemed manslaughter and shall constitute a felony of the second degree." DUI manslaughter is not a type of manslaughter resulting from the operation of a motor vehicle. See McCreary v State, 371 So.2d 1024 (Fla. 1979).

Vehicular Homicide is defined in **s. 782.071, F.S.**, as "the killing of a human being by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another." Vehicular homicide is a felony of the third degree. Therefore, by definition, every vehicular homicide is committed through the "operation of a motor vehicle".

Current Guidelines For Reinstatement of Driving Privileges

Section 322.271, F.S. currently provides the guidelines for how and when a person may apply for reinstatement of driving privileges revoked under s. 322.27(5), F.S. However, it is important to note that the court does not have the authority to actually revoke/suspend someone's license. The court may merely direct the department to do so. Neil v. State, 556 So.2d 486 (Fla.App. 2 Dist. 1990). Currently, an individual, whose license has been revoked for committing an offense which permits reinstatement, can petition the department for reinstatement. This occurs without the authorization of the court, and regardless of the number of prior convictions.

Under s. 322.271(4), F.S., if someone's license is revoked because they have been convicted for Driving Under the Influence four times (in violation of s. 316.193, F.S.), the individual may petition for reinstatement after five years from the date of revocation or five years after the termination of incarceration, whichever is later. There are, of course, a number of qualifications for this reinstatement.

Both **s. 322.28(2)(e), F.S.** and **s. 322.26(2), F.S.**, provide that "the court shall permanently revoke the driver's license or driving privilege of any person who has been convicted of DUI manslaughter in violation of s. 316.193, F.S." However, after five years

from the date of revocation, the defendant may petition the department for reinstatement.

Under **s. 322.28(5)(a), F.S.**, the length of revocation of driving privileges for a conviction of manslaughter resulting from the operation of a motor vehicle is a minimum of three years. However, under **s. 322.26(1), F.S.**, the revocation is permanent.

Currently, the suspension of driver licenses occurs upon conviction. **S. 322.28, F.S.** However, if an individual is incarcerated for DUI manslaughter, the time needed to expire before being capable of petitioning for reinstatement is the latter of five years after the revocation or five years after the date of termination of incarceration. Therefore, there is a small safeguard in place to protect a suspension of driving privileges being served while incarcerated. However, if the individual is jailed for any other offense, there is currently nothing prohibiting someone from serving the suspension time while incarcerated (and unable to drive anyway).

Current Penalties for Driving without a Licence

Section 322.34(2), F.S., states that:

(2) Any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except persons defined in s. 322.264, F.S., who knowing of such cancellation, suspension, or revocation, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked:

- (a) A first conviction is guilty of a misdemeanor of the second degree
- (b) A second conviction is guilty of a misdemeanor of the first degree
- (c) A third or subsequent conviction is guilty of a felony of the third degree.

According to **s. 322.34(5), F.S.**, any person whose driver license has been revoked pursuant to s. 322.264, F.S., and who drives any motor vehicle upon the highways of this state is guilty of a felony of the third degree. However, there is currently no mention of the penalty for driving with a permanently revoked license.

"Reinstatement" vs. "Restoration" As Used In s. 322.271, F.S.

The current terminology of **s. 322.271(1)(b), F.S.**, is not in conformity with the rest of this section, or this chapter dealing with drivers' licenses. In all other sections addressing the return of driving privileges, the word "reinstatement" is used. Only this section of the chapter uses the word "restoration".

B. EFFECT OF PROPOSED CHANGES:

(Section 1):

The bill amends **s. 322.271, F.S.**, to add murder resulting from the operation of a motor vehicle, vehicular homicide, and driving without a license involving death to the list of offenses which result in mandatory revocation. These offenses, as well as manslaughter resulting from the operation of a motor vehicle, now require permanent revocation.

Thus, under this section of the bill, a person who commits murder as a result of the operation of a motor vehicle will have their license permanently revoked.

(Section 2):

The bill amends **s. 322.271, F.S.**, to provide that someone who had their license permanently revoked for manslaughter by operation of a motor vehicle, vehicular homicide, or a violation of 322.34(6), F.S., (driving while license revoked), may petition for reinstatement provided that five years have expired since the date of revocation and the defendant has not committed a driving violation resulting in incarceration during the past five years. Murder resulting from the operation of a motor vehicle is the one offense which can not be petitioned.

Thus, under this section of the bill, a person who had their license permanently revoked for vehicular homicide may petition for reinstatement after five years (with expressed authorization of the court).

(Section 3):

The bill creates **s. 322.275, F.S.**, to provide for the authority of the court to authorize a petition for reinstatement of permanently revoked driver license. Before granting authorization, the court must determine whether defendant has a prior conviction for any of the offenses which specifically preclude authorization. The court may authorize a defendant convicted of a fourth or subsequent offense to petition the department as long as three or more of the previous convictions have not occurred in the past three years, and the defendant does not pose a significant risk to public safety.

Thus, under this section of the bill, a person with a permanently revoked license due to a DUI manslaughter conviction must receive court authorization in order to petition the department for reinstatement. This individual will not receive authorization if he/she has any of the prior convictions specifically enumerated in the created statute.

(Section 4):

The bill amends **s. 322.28, F.S.**, to revise the language with respect to the period of suspension or revocation; conforming current language to the act. The bill adds language necessary to conform to the other provisions of the act and removes the redundancy with respect to the permanent revocation for a conviction for DUI manslaughter.

(Section 5):

The bill creates **s. 322.283, F.S.**, providing that period of suspension or revocation for incarcerated offenders will commence upon the defendant's release from incarceration and that notification of defendant's release date be sent to the Department of Highway Safety and Motor Vehicles by the correctional facility.

Thus, under the bill, a person who is sentenced to three years in jail for vehicular homicide will have their name and release date sent to the Department of Highway Safety and Motor Vehicles. However, the five year mandatory revocation period will not commence until the release from incarceration.

(Section 6):

The bill creates **s. 322.341, F.S.**, to provide that it is a third-degree felony, with a minimum of two years imprisonment, to drive while a license is permanently revoked.

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.

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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:

322.26, 322.271, 322.28, 322.34

E. SECTION-BY-SECTION RESEARCH:

Section 1: The bill amends **s. 322.26, F.S.**, to provide for permanent revocation of a driver license for murder resulting from the operation of a motor vehicle and for vehicular homicide.

Section 2: The bill amends **s. 322.271, F.S.**, to provide for petition for reinstatement under certain circumstances.

Section 3: The bill creates **s. 322.275, F.S.**, to provide for the authority of the court to authorize reinstatement of permanently revoked driver license.

Section 4: The bill amends **s. 322.28, F.S.**, to revise the language with respect to the period of suspension or revocation; conforming current language to the act.

Section 5: The bill creates **s. 322.283, F.S.**, providing for the commencement of the period of suspension or revocation for incarcerated offenders; providing for notification to the Department of Highway Safety and Motor Vehicles.

Section 6: The bill creates **s. 322.341, F.S.**, to provide penalties for driving while a license is permanently revoked. The bill provides an effective date of October 1, of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is not subject to the mandates provision because it affects a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce 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.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Law Enforcement and Public Safety adopted a strike-everything amendment on March 17, 1998 and the changes are reflected herein.

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VII. SIGNATURES:

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