

STORAGE NAME: h3511.leps
DATE: March 13, 1998

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

BILL #: HB 3511
RELATING TO: Drivers License Revocations
SPONSOR(S): 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
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

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

The bill amends **s. 322.271, F.S.**, providing for petition for reinstatement under certain circumstances and eliminates the ability to apply for reinstatement if a person is convicted of four or more DUI violations.

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

The bill amends **s. 322.28, F.S.**, revising language with respect to the period of suspension or revocation (conforming current language to the act).

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.

The bill amends **s. 322.34, F.S.**, providing that the element of knowledge with respect to the suspension, revocation, cancellation, or disqualification is satisfied when certain notice is sent.

The bill creates **s. 322.341, F.S.**, providing penalties for driving while a license is permanently revoked.

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

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

(Section 1):

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, 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".

(Sections 2 and 3):

"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".

Guidelines For Reinstatement of Driving Privileges

Section 322.271, F.S. currently provides the guidelines for if, how, and when a person may apply for reinstatement of driving privileges revoked under s. 322.27(5), F.S.

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.),

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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.

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 convictions. **S. 322.271, F.S.**

(Section 4):

Section 322.28(2)(e), F.S., provides 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." This provision is also located in **s. 322.26(2), F.S.**

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.

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).

(Section 5):

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).

(Section 6):

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.

The element of knowledge is satisfied if the person has been previously cited; or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice.

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However, under **s. 322.251, F.S.**, simply mailing a suspension/revocation notice to the last known address of the licensee is sufficient notification after 20 days have passed, and “any failure by the person to receive the mailed order will not affect or stay” the suspension or revocation.

(Section 7):

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.

B. EFFECT OF PROPOSED CHANGES:

(Section 1):

The bill amends **s. 322.271, 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.

Thus, under the bill, a person who commits murder, as a result of the operation of a motor vehicle, would have their license permanently revoked, with no opportunity for reinstatement.

(Section 2):

The bill amends **s. 322.271, F.S.**, to provide for petition for reinstatement under certain circumstances and eliminated the ability to apply for reinstatement if a person is convicted of four or more DUI violations.

This bill makes it possible for someone who has been convicted and 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), to petition for reinstatement for business or employment purposes provided that five years have expired since the date of revocation.

Thus, under the bill, once a person is convicted four times for driving under the influence, the individual may not apply for the reinstatement of driving privileges.

(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.

This bill, in making it necessary for the court to authorize a defendant to petition the department, allows the court to look at the prior convictions of the defendant and sets guidelines for doing so. Only in the absence of the prior convictions listed in **s. 322.2756(1), F.S.**, may the court authorize the defendant to petition the department.

Thus, under 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 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 removes the redundancy in the statute with respect to the permanent revocation for a conviction for DUI manslaughter.

The bill adds language necessary to conform to the other provisions of the act. For example, because the bill provides for (in Section 1) the permanent revocation of driver license for committing the offense of murder as a result of the operation of a motor vehicle, there is a necessity to add language supporting this addition in the section entitled "Period of suspension or revocation" (S. 322.28, F.S.). This section of the bill is set forth to accomplish that necessity.

(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.

The bill provides that the period of suspension or revocation "shall commence upon the defendant's release from incarceration." In trying to determine someone's eligibility for reinstatement, the date of their release from incarceration will be the date the suspension was imposed. The Department of Highway Safety and Motor Vehicles will be kept on notice by the facility of who is incarcerated, and when they will be released.

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, and will not have their drivers license suspended/revoked until released from incarceration. The five year period which, under section 2 of this bill, now must expire before a court determines whether to authorize a petition for reinstatement, does not begin to count until the release from incarceration.

(Section 6):

The bill amends **s. 322.34, F.S.**, providing that the element of knowledge with respect to the suspension, revocation, cancellation, or disqualification is satisfied when certain notice is sent.

Thus, under the bill, when the department mails a notice of a loss of driving privileges to a licensee's last known address of record, the knowledge element of driving while a license is suspended, revoked, canceled, or disqualified is met and the person can not claim that they did not know of the suspension.

(Section 7):

The bill creates **s. 322.341, F.S.**, to provide penalties for driving while a license is permanently revoked.

Thus, under the bill, a person whose drivers license has been permanently revoked for murder as a result of the operation of a motor vehicle (created in section 1 of this

bill) who gets caught driving will be guilty of a second-degree felony and sentenced to a minimum of two years imprisonment.

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.

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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:

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(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.

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Section 7: 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.

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V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

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