

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 27, 1998 Revised: 03/04/98 \_\_\_\_\_

Subject: DUI

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Dugger</u>	<u>Miller</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>Withdrawn</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

**I. Summary:**

Senate Bill 554 increases the penalty for a “simple” DUI (no property damage or personal injury occurs) by making it a third degree felony when it is the third or subsequent DUI, rather than a fourth or subsequent DUI, as is currently required. Thus, under the Criminal Punishment Code, when a person commits a third DUI offense, rather than a fourth DUI offense, he or she will be subject to a penalty ranging from a non-state prison sanction up to five years in prison and a fine not exceeding \$5,000. The bill also increases the minimum fine for a third or subsequent DUI from \$1,000 to \$2,500. (Currently, the penalty for the commission of a third “simple” DUI is a fine ranging from \$1,000 to \$2,500 and possible imprisonment up to 12 months in jail.)

These new penalties will also apply to a third or subsequent “simple” DUI offense when the driver has a blood or breath alcohol level (BAL) of .20 percent or higher or when a passenger under the age of 18 is present in the vehicle, except that the fine will range from \$3,500 to \$7,000. (Currently, the penalty under these circumstances is a fine ranging from \$2,000 to \$5,000 and imprisonment up to 12 months in jail.)

This bill substantially amends the following sections of the Florida Statutes: 316.193 and 921.0022.

**II. Present Situation:**

Section 316.193, F.S., proscribes the offense of driving under the influence of alcohol or drugs to the extent normal faculties are impaired or driving with a blood or breath alcohol level of .08 percent or higher (DUI). Penalties for DUI vary according to the frequency of previous convictions, the offender’s blood alcohol level when arrested, and whether serious injury or death results.

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Generally, modified misdemeanor penalties apply when there has been no property damage or personal injury (commonly referred to as “**simple**” DUI) and when there have been less than four DUI convictions. For example, a **first-time offender** is subject to a **fine ranging from \$250 to \$500**, as well as being subject to **serving up to 6 months in county jail**. He must also be on probation for up to 1 year and participate in 50 hours of community service. However, if the convicted offender’s *BAL* is *.20 percent or higher*, or a passenger under 18 years of age is present in the vehicle, then the *penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months in jail*.

A **second “simple” DUI** conviction carries a **fine ranging from \$500 to \$1,000 and possible imprisonment up to 9 months in jail**. However, if that conviction occurs within 5 years of a previous DUI conviction, then there is a mandatory imprisonment time of at least 10 days. At least 48 hours of this confinement must be consecutive. *Enhanced penalties* also apply when the offender’s *BAL* is *.20 percent or higher*, or when a passenger under the age of 18 is present in the vehicle to include a *fine ranging from \$1,000 to \$2,000 and imprisonment not exceeding 12 months*.

A **third or subsequent DUI** conviction carries a **fine ranging from \$1,000 to \$2,500 and possible imprisonment up to 12 months in jail**. However, if that conviction occurs within 10 years of a previous DUI conviction, then there is a 30-day minimum mandatory imprisonment sentence. At least 48 hours of this confinement must be consecutive. *Enhanced penalties* also apply when the offender’s *BAL* is *.20 percent or higher*, or when a passenger under the age of 18 is present in the vehicle to include a *fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months*.

A **fourth or subsequent DUI** conviction results in a **third degree felony** penalty, which means a **minimum fine of \$1,000 but not exceeding \$5,000 and imprisonment up to 5 years**. This felony is ranked as a level 6 offense in s. 921.0012, F.S., which means that the minimum penalty when there are no other factors at sentencing such as prior record, is a non-state prison sanction and the maximum prison penalty is 13.4 months. Under the Criminal Punishment Code, which becomes effective for offenses committed on or after October 1, 1998, the penalty ranges from a non-state prison sanction up to 5 years in prison.

A DUI offense involving property damage results in a first degree misdemeanor penalty, punishable by a fine not exceeding \$1,000 and/or imprisonment up to 1 year in jail. A DUI offense involving serious injury results in a third degree felony, punishable by a fine not exceeding \$5,000 and/or imprisonment up to 5 years. A DUI offense resulting in death is a second degree felony, punishable by a fine not exceeding \$10,000 and/or imprisonment up to 15 years.

In addition to these criminal penalties, a DUI conviction also results in driver’s license revocation under s. 322.28, F.S., as follows: at least 180 days to 1 year for a first conviction; at least 5 years for a second conviction within 5 years of a prior conviction; and at least 10 years for a third conviction within 10 years from the first of three or more prior convictions.

What follows is a chart prescribing the current penalties for committing “simple” DUI, including the enhanced penalties when the driver has a BAL of .20 percent or higher or when a passenger under the age of 18 is present in the vehicle (the chart does not show the 10-day and 30-day minimum mandatory imprisonment periods if the DUI’s are committed within a certain time of each other):

<u>“Simple” DUI</u> <i>(no enhanced penalties for .20 percent or higher BAL)</i>	<b>Imprisonment (maximum)</b>	<b>Fine</b>	<b>Imprisonment (maximum)</b> <u>“Simple” DUI</u> <i>(with enhanced penalties for .20 percent or higher BAL):</i>	<b>Fine</b> <u>“Simple” DUI</u> <i>(with enhanced penalties for .20 percent or higher BAL):</i>
1st offense	6 months jail	\$250-\$500	9 months jail	\$500-\$1,000
2nd offense	9 months jail	\$500-\$1,000	12 months jail	\$1,000-\$2,000
3rd offense	12 months jail	\$1,000-\$2,500	12 months jail	\$2,000-\$5,000
4th offense (felony)	5 years prison	\$1,000-\$5,000	5 years prison	\$2,000-\$5,000

**III. Effect of Proposed Changes:**

Senate Bill 554 increases the penalty for a “simple” DUI (no property damage or personal injury occurs) by making it a third degree felony when it is the third or subsequent DUI, rather than a fourth or subsequent DUI, as is currently required. The Criminal Punishment Code is amended to conform with this change in penalties. Thus, under the Code, when a person commits a third DUI offense, rather than a fourth DUI offense, he or she will be subject to a penalty ranging from a non-state prison sanction up to five years in prison and a fine not exceeding \$5,000. The bill also increases the minimum fine for a third or subsequent DUI from \$1,000 to \$2,500. (Currently, the penalty for the commission of a third “simple” DUI is a fine ranging from \$1,000 to \$2,500 and possible imprisonment up to 12 months in jail.)

These new penalties will also apply to a third or subsequent “simple” DUI offense when the driver has a BAL of .20 percent or higher or when a passenger under the age of 18 is present in the vehicle, except that the fine will range from \$3,500 to \$7,000. (Currently, the penalty under these circumstances is a fine ranging from \$2,000 to \$5,000 and imprisonment up to 12 months in jail.)

What follows is a chart prescribing the penalties under the bill for committing “simple” DUI, including the enhanced penalties when the driver has a BAL of .20 percent or higher or when a passenger under the age of 18 is present in the vehicle (the chart does not show the 10-day and 30-day minimum mandatory imprisonment periods if the DUI’s are committed within a certain time of each other):

<u>“Simple” DUI</u> <i>(no enhanced penalties for .20 percent or higher BAL)</i>	<b>Imprisonment (maximum)</b>	<b>Fine</b>	<b>Imprisonment (maximum)</b> <u>“Simple” DUI</u> <i>(with enhanced penalties for .20 percent or higher BAL):</i>	<b>Fine</b> <u>“Simple” DUI</u> <i>(with enhanced penalties for .20 percent or higher BAL):</i>
1st offense	6 months jail	\$250-\$500	9 months jail	\$500-\$1,000
2nd offense	9 months jail	\$500-\$1,000	12 months jail	\$1,000-\$2,000
3rd offense (felony)	5 years prison	\$2,500-\$5,000	5 years prison	\$3,500-\$7,000
4th offense (felony)	5 years prison	\$2,500-\$5,000	5 years prison	\$3,500-\$7,000

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, persons convicted of a third or subsequent “simple” DUI will be subject to paying higher fines (see the chart in Present and Proposed Changes Sections).

### C. Government Sector Impact:

According to the Criminal Justice Estimating Conference, SB 554 will impact prison beds as follows:

<b>Fiscal Year</b>	<b>Projected Additional Cumulative Beds Required</b>	<b>Additional Beds Required</b>	<b>Operating Costs</b>	<b>Fixed Capital Outlay</b>	<b>Total All Funds</b>
1998-99	42	42	\$389,570	\$5,132,584	\$5,522,154
1999-00	194	152	\$2,226,079	\$3,067,129	\$5,293,208
2000-01	308	114	\$4,817,413	\$3,229,913	\$8,047,326
2001-02	426	118	\$7,169,422	\$1,643,761	\$8,813,182
2002-03	485	59	\$9,061,358	\$0	\$9,061,358
<b>TOTAL</b>			<b>\$23,663,841</b>	<b>\$13,073,386</b>	<b>\$36,737,228</b>

This impact was arrived at by the Conference using DUI arrest data from the Florida Department of Law Enforcement. (Data on the number of persons convicted of a third DUI was unavailable from the Florida Supreme Court and the Department of Highway Safety and Motor Vehicles, according to the Conference.) There were 3,211 persons arrested for DUI who had two prior DUI arrests and 2,285 persons with three prior DUI arrests in 1995.

Prison and supervision to DUI arrest ratios were computed based on the 2,285 arrests and prison and supervision admissions in FY 1995-96 as follows: prison admissions--- $204/2,285=8.9\%$ ; community control admissions--- $153/2,285=6.7\%$ ; drug offender probation--- $48/2,285=2.1\%$ ; and probation admissions--- $264/2,285=11.6\%$ .

These ratios were applied to the 3,211 persons arrested for their third DUI in 1995-96 to calculate new annual admissions to prison or supervision as follows: prison admissions---286; community control admissions---215; probation admissions---371; and drug offender probation---67 (total supervision--- 653). The estimated prison time served for the 204 prison admissions in 1995-96 was applied to calculate the projected prison admissions which will occur under SB 544 to arrive at the number of required prison beds.

Similarly, the estimated supervision sentences for the 653 persons in 1995-96 were applied to calculate the resulting future projection for the number of offenders that will fall under the Department of Corrections' supervision as a result of this bill. The projected total number of persons that will fall under the Department of Corrections' supervision for community control and probation is as follows: for FY 1997-98, it will be 490; for FY 1998-99, it will be 1,070; for FY 1999-00, it will be 1,556; for FY 2000-01, it will be 1,827; and for FY 2001-02, it will be 2,019.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Criminal fines are prescribed under s. 775.083, F.S. The maximum fine for a third degree felony under this section is \$5,000. The bill allows a maximum fine of \$7,000 for a third or subsequent DUI when the driver's BAL is .20 percent or higher or when a passenger under the age of 18 is present in the vehicle. An amendment is recommended to lower that amount to \$5,000.

**VIII. Amendments:**

#1 by Criminal Justice:

Reinstates the minimum \$1,000 fine currently required for a fourth DUI conviction and makes it applicable to the third DUI conviction. (WITH TITLE AMENDMENT)

#2 by Criminal Justice:

Reinstates the currently required fine for a third or subsequent DUI conviction when the driver's BAL is .20 percent or higher or when a passenger under the age of 18 is present in the vehicle (not less than \$2,000 or more than \$5,000). (WITH TITLE AMENDMENT)