

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.)

BILL: CS/SB 94

SPONSOR: Criminal Justice Committee and Senator Rossin

SUBJECT: Driving Under the Influence

DATE: January 20, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrow</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 94 increases the crime level for: a fourth or subsequent DUI from a third to a second degree felony; DUI with property damage valued in excess of \$10,000 from a first degree misdemeanor to a third degree felony; DUI with serious bodily injury to another person from a third to a second degree felony; and DUI with the death of any human being from a second to a first degree felony. The CS would also delete language that treated DUI manslaughter with failure to give information and render aid separately from DUI manslaughter.

The changes made in this CS would maintain a third DUI to be punishable by up to one year in jail; however, it would make a fourth or subsequent DUI punishable by up to 15 years in prison.

The CS takes effect on October 1, 1999.

This CS substantially amends section 316.193 of the Florida Statutes.

II. Present Situation:

Driving Under the Influence of Alcohol or Drugs (DUI)

A DUI 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 percent, **OR**
- ▶ The person is under the influence of alcohol or a controlled substance to the extent that their normal faculties are impaired.

Florida’s DUI penalties are designed to address four related types of criminal conduct. The penalties vary for each as follows:

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

Reclassification of DUI

DUI, 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 DUI in Florida, for successive convictions, as found in s. 316.193, F.S., are as follows:

DUI Penalties

	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** means Blood Alcohol Content.

DUI For Controlled Substances

Under current law, a person may be convicted of DUI 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 DUI for alcohol, there is no easy test to determine whether a driver has ingested a controlled substance or exactly how much he or she has ingested. Consequently, the DUI 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 DUI 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., which is the implied consent statute, specifically requires drivers to submit to a urine test for the presence of a chemical substance listed in s. 877.011, F.S., or a controlled substance as listed in s. 893.13, F.S., or face the same driver's license suspension penalty as they would face for failing to submit to a breath-alcohol test.

Mandatory Sentences For Repeat DUI Offenders

A sentence for a first DUI offense does not have any mandatory jail sentence associated with the offense. A first-time DUI offender will usually be punished by probation ranging from between six months and a year. However, certain "repeat" DUI offenses carry mandatory jail sentences. If a person commits a second DUI within 5 years, he or she must serve a mandatory minimum of 10 days in jail. If a person commits a third DUI within 10 years, he or she must serve a mandatory minimum of 30 days in jail. A person who commits a fourth DUI within any time frame is deemed to have committed a third degree felony, but does not have any mandatory incarcerative time associated with the offense.

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. The driver is also required to exhibit his or her 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. The statute states that 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 is not to be construed as extending information which would violate the privilege of such person against self-incrimination.

III. Effect of Proposed Changes:

The current crime level for several DUI-related offenses would be increased one level under this CS. A violation of s. 316.193(2)(b), F.S., which is a fourth or subsequent DUI, would be increased from a third to a second degree felony. A violation of s. 316.193(3)(c)2., F.S., which would be DUI with property damage to property owned by another person, would increase the penalties from a first degree misdemeanor to a third degree felony *if* the damage is valued in excess of \$10,000. DUI with damage to property of another that is valued at \$10,000 or less, which would be a violation of s. 316.193(3)(c)1., F.S., would remain a first degree misdemeanor. A violation of s. 316.193(3)(c)3., F.S., which is DUI with serious bodily injury to another person, would increase the penalties from a third to a second degree felony. A violation of s. 316.193(3)(c)3., F.S., which would be DUI with the death of any human being or "manslaughter," would be changed from a second to a first degree felony.

The CS would delete language that treated DUI manslaughter with failure to give information and render aid, which is a violation of s. 316.193(3)(c)3.b., F.S., differently and more severely in penalties than DUI manslaughter. As a result, a DUI manslaughter would be a first degree felony regardless of whether the offender stopped to give information or render aid or not.

The law pertaining to first, second, or third time DUI offenders would not be changed. Therefore, a person who commits DUI for the first, second, or third time would commit a “criminal traffic” offense that is considered to be a “quasi” first degree misdemeanor. If an offender commits a fourth DUI, that offense jumps from being a criminal traffic offense that is punishable by up to one year in a county jail to being a second degree felony which is punishable by up to 15 years in prison.

Under the Criminal Punishment Code, any non-capital felony offender can be sentenced for a first offense up to the statutory maximum sentence. The minimum threshold sentence is the “lowest” sentence that can be imposed, which depends on the facts involved in each individual case and the criminal history of each defendant. Nevertheless, under this CS, a first-time violation of any offense changed in this CS could theoretically be sentenced up to:

- ▶ Fourth or subsequent DUI: 15 years.
- ▶ DUI with damage to property of another person that is valued in excess of \$10,000: 5 years.
- ▶ DUI with serious bodily injury to another person: 15 years.
- ▶ DUI causing the death of any human being: 30 years.

The rankings of these offenses in the Criminal Punishment Code’s offense severity ranking chart would not be changed by this CS. The offense severity ranking chart is only changed to reflect the changes in felony degree and subparagraph designation that are proposed in this CS. The offense of DUI with damage to the property of another person valued in excess of \$10,000, which would become a third degree felony, is not ranked in this CS. Therefore, this offense would be unranked, which would default to a level one offense as a third degree felony.

The provisions of the CS would take effect on October 1, 1999, and would apply to offenses committed on or after that date.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met in December 1998 to form a consensus on the fiscal impact of the original bill. It was determined that *if* current sentencing practices remain the same there would be a “minimal” prison bed impact upon the state prison system with regard to the crime level increases to a fourth or subsequent DUI, a DUI with serious bodily injury, and a DUI manslaughter. It was determined that there is an “unknown” prison bed impact with regard to the offense level increase for DUI with property damage which changes from a first degree misdemeanor to a third degree felony.

The impact conference noted that *if* current sentencing practices remain the same there is a “potentially significant” impact upon the Department of Corrections as the community supervision population could greatly increase. More offenders would be sentenced to community supervision by the Department and would be supervised for longer periods of time. A more definite impact upon the Department is unknown at this time.

With the changes made in the CS, staff anticipates that there would be an insignificant change in the fiscal impact determined for the original bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.