

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/CS/SB 94

SPONSOR: Criminal Justice Committee and Senator Rossin

SUBJECT: Driving Under the Influence

DATE: January 22, 1999 REVISED: 2/5/99 _____

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

I. Summary:

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

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

The CS/CS takes effect on October 1, 1999.

This CS/CS substantially amends sections 316.193 and 327.35 of the Florida Statutes

II. Present Situation:

Driving Under the Influence of Alcohol or Drugs (DUI)/Operating a Vessel under the Influence of Alcohol or Drugs (BUI)

A DUI/BUI conviction requires proof of the following elements:

- ▶ The person was driving or in actual physical control of a vehicle or operating a vessel, **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/BUI penalties are designed to address four related types of criminal conduct. The penalties vary for each as follows:

- 1) **Simple DUI/BUI** -- 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/BUI With Property Damage** -- In the event of an accident, the maximum penalty is a \$1,000 fine and 9 months in jail.
- 3) **DUI/BUI 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/BUI 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/BUI

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

DUI/BUI 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/BUI For Controlled Substances

Under current law, a person may be convicted of DUI for driving a vehicle or of BUI for operating a vessel under the influence of a controlled substance, the same as if he or she were driving or operating a vessel under the influence of alcohol, if the influence of the controlled substance impaired the person’s “normal faculties.”

Unlike DUI/BUI 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/BUI law contains no threshold level of consumption of controlled substances from which impairment may be inferred like there is for alcohol (.08 BAL). Nonetheless, a person may be convicted for DUI/BUI 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 for drivers of motor vehicles, 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. Section 327.352, F.S., is the implied consent statute for operators of vessels and requires submission to a urine test for the presence of chemical or controlled substances. The penalty for failure to submit to such tests is a \$500 civil penalty.

Mandatory Sentences For Repeat DUI/BUI Offenders

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

Section 327.30, F.S., requires any vessel operator to render aid in an accident to the extent he or she can do so without serious danger and to notify the appropriate law enforcement agency without delay. Any vessel operator who leaves the scene of an accident without giving all possible aid or who does not report the accident to the appropriate law enforcement agency commits a third degree felony if personal injury was involved, or a second degree misdemeanor if property damage only was involved. 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/BUI-related offenses would be increased one level under this CS/CS. Violations of s. 316.193(2)(b), F.S., which is a fourth or subsequent DUI, or of s. 327.35(2)(b), F.S., which is a fourth or subsequent BUI, 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 damage to property owned by another person, or of s. 327.35(3)(c)2., F.S., which is BUI with 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/BUI with damage to property of another that is valued at \$10,000 or less 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, or of s. 327.35(3)(c)3., F.S., which is BUI 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)4., F.S., or of s. 327.35(3)(c)4., F.S., which would be DUI/BUI with the death of any human being or “manslaughter,” would be changed from a second to a first degree felony.

The CS/CS would delete language that treated DUI/BUI manslaughter with failure to give information and render aid (which are violations of s. 316.193(3)(c)3.b., F.S., and s. 327.35(3)(c)3.b., F.S., respectively) differently and more severely in penalties than DUI/BUI manslaughter. As a result, a DUI/BUI 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/BUI offenders would not be changed. Therefore, a person who commits DUI/BUI 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/BUI, that offense jumps from being 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/CS, a first-time violation of any offense changed in this CS/CS could theoretically be sentenced up to:

- ▶ Fourth or subsequent DUI/BUI: 15 years.
- ▶ DUI/BUI with damage to property of another person that is valued in excess of \$10,000: 5 years.
- ▶ DUI/BUI with serious bodily injury to another person: 15 years.
- ▶ DUI/BUI 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/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/CS. The offense of DUI/BUI 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/CS. Therefore, this offense would be unranked, which would default to a level one offense as a third degree felony.

This CS/CS lowers the blood-alcohol level threshold for enhanced penalties for DUI/BUI from .20 (grams of alcohol per 210 liters of breath) to .16. These enhanced penalties apply to the first three DUI/BUI offenses. Upon the fourth conviction when the penalty for DUI/BUI becomes a felony of the third degree, the penalties are the same regardless of the BAL over .08.

The provisions of the CS/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 (CJIC) 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.

Additional Comments by Fiscal Policy Staff:

The Criminal Justice Impact Conference projected an “insignificant” effect on the Department of Corrections’ bed need as a result of the changes in CS/SB 94. Although the impact on the supervised population cannot be determined and is potentially significant, the change in made in CS/SB 94 requiring property damage in excess of \$10,000 before a DUI-involved accident becomes a felony should eliminate cases involving “fender-benders” and other minor accidents.

Including BUI as also being subject to enhanced penalties should not significantly alter the original CJIC estimate of prison bed need since BUI makes up such a small proportion of alcohol-involved offenders currently being sent to prison.

Lowering the blood-alcohol level threshold for enhanced penalties for DUI/BUI from .20 (grams of alcohol per 210 liters of breath) to .16 could increase jail populations by some indeterminate, but probably small amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.