

STORAGE NAME: h1391a.jo.doc
DATE: April 3, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 1391
RELATING TO: Felony Traffic Cases
SPONSOR(S): Representative Simmons
TIED BILL(S): none

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

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (3) SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

This bill authorizes the chief judge of a circuit to transfer all felony traffic and vessel cases, with described exceptions, to the county courts in the circuit and provides that upon such a transfer the county court shall have complete jurisdiction to hear such cases.

There is a constitutional concern regarding this bill, see "Constitutional Issues".

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Art. V, s. 6, Fla.Const., provides that the county courts exercise the jurisdiction prescribed by general law. Art. V, s. 5, Fla.Const., provides that the circuit courts shall have original jurisdiction not vested in the county courts.

Section 26.012, F.S., provides that circuit courts have exclusive original jurisdiction of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged. Section 34.01(1), F.S., provides that county courts have original jurisdiction in all misdemeanor cases not cognizable by the circuit courts.

There is no statutory definition for "traffic and vessel cases". There are a number of offenses in Florida law relating to traffic and vessel matters, many of which are simple infractions. Many of the counties have set up a traffic division, where county court judges are assigned to hear traffic infractions and traffic misdemeanor cases. The following is a list of felonies that appear to perhaps fit into the category of traffic or vessel cases:

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|------------------------|---|
| s. 316.027(1), F.S. | Leaving the scene of an accident involving injuries |
| s. 316.193(2)(b), F.S. | Driving under the influence, fourth or subsequent offense. |
| s. 316.193(3)(c), F.S. | DUI accident causing serious bodily injury or death |
| s. 316.1935(2), F.S. | Fleeing or attempting to elude law enforcement officer resulting in high-speed pursuit. |
| s. 316.1935(3), F.S. | Aggravated fleeing or eluding. |
| s. 319.30(4), F.S. | Possession by junkyard of motor vehicle with identification number plate removed. |
| s. 319.30(5), F.S. | Sell, exchange, give away certificate of title or identification number plate. |
| s. 319.33(1)(a), F.S. | Alter or forge any certificate of title to a motor vehicle or mobile home. |
| s. 319.33(1)(c), F.S. | Procure or pass title on stolen vehicle. |
| s. 319.33(4), F.S. | With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration. |
| s. 319.35(1)(a), F.S. | Tamper, adjust, change, etc., an odometer. |
| s. 320.26(1)(a), F.S. | Counterfeit, manufacture, or sell registration license plates or validation stickers. |
| s. 322.212(1), F.S. | Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification. |

s. 322.212(4), F.S.	Supply or aid in supplying unauthorized driver's license or identification card.
s. 322.212(5)(a), F.S.	False application for driver's license or identification card.
s. 322.34(2)(c), F.S.	Driving while license suspended or revoked, third or subsequent offense.
s. 322.34(3), F.S.	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
s. 327.30(5), F.S.	Vessel accidents involving personal injury; leaving scene.
s. 327.35(2)(b), F.S.	Operating vessel under the influence, 4th or subsequent offense.
s. 327.35(3), F.S.	Operating vessel under the influence, causing serious bodily injury or death.
s. 328.05(2), F.S.	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
s. 328.07(4), F.S.	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
s. 775.21(9), F.S.	Failure of a registered sex offender to renew his or her driver's license or identification card
s. 782.071(1), F.S.	Killing of human being by the operation of a motor vehicle in a reckless manner (vehicular homicide).
s. 782.072(1), F.S.	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
s. 784.021, F.S.	Aggravated assault with weapon (a vehicle or a vessel can be a weapon)
s. 790.15(3), F.S.	Person directs another to discharge firearm from a vehicle.
s. 812.133(2)(b), F.S.	Carjacking; no firearm, deadly weapon, or other weapon.
s. 817.52(1), F.S.	Obtaining vehicle with intent to defraud.
s. 817.52(2), F.S.	Hiring motor vehicle with intent to defraud.
s. 817.52(3), F.S.	Failure to return rented vehicle.
s. 831.29, F.S.	Possession of instruments for counterfeiting driver's licenses or identification cards.
s. 843.18, F.S.	Fleeing by boat.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 26.012, F.S., to provide that the chief judge of a circuit may transfer any or all felony traffic and vessel cases, to county courts in the circuit, and the county court shall thereupon have the complete power to exercise such jurisdiction.

This transfer provision does not apply to traffic and vessel cases involving or arising out of s. 316.193(3)(c)2., F.S. (3rd degree felony for DUI with serious bodily injury), s. 316.193(3)(c)3., F.S. (2nd or 1st degree felony for DUI Manslaughter); s. 327.35(3)(c)2., F.S. (3rd degree felony for boating under the influence causing serious bodily injury); or s. 327.35(3)(c)3., F.S. (2nd or 1st degree felony for boating under the influence causing death).

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Art. V, s. 6, Fla.Const., provides that the county courts exercise the jurisdiction prescribed by general law, and that "[s]uch jurisdiction shall be uniform throughout the state." There is a concern that this bill may perhaps provide for non-uniform jurisdiction of county courts.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

There is a concern that the term "traffic or vessel cases" is not clearly defined. A criminal jurisdictional statute that is unclear has the potential to lead to dismissal of criminal cases for lack of subject matter jurisdiction. Such dismissal could occur at any time, even on collateral attack years later.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 3, 2001, the Committee on Judicial Oversight adopted one amendment removing everything after the enactment clause. The amendment addresses the concerns regarding potential uneven jurisdiction of county courts, and the unclear phrase "traffic or vessel cases", by listing specific felony cases that are transferred to the county courts, namely:

- s. 316.193(2)(b), F.S. Driving under the influence, fourth or subsequent offense.
- s. 316.1935(2), F.S. Fleeing or attempting to elude law enforcement officer resulting in high-speed pursuit.
- s. 322.212(1), F.S. Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification.
- s. 322.212(5)(a), F.S. False application for driver's license or identification card.
- s. 322.34(2)(c), F.S. Driving while license suspended or revoked, third or subsequent offense.
- s. 327.35(2)(b), F.S. Operating vessel under the influence, 4th or subsequent offense.
- s. 817.52(1), F.S. Obtaining vehicle with intent to defraud.
- s. 817.52(2), F.S. Hiring motor vehicle with intent to defraud.
- s. 817.52(3), F.S. Failure to return rented vehicle.

The amendment also provides that jurisdiction of an appeal of any such felony offense would be in the district courts of appeal.

The bill was then reported favorably as amended.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

Lynne Overton, J.D.