

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 326
 SPONSOR: Senator Saunders
 SUBJECT: Culpable Negligence/DUI
 DATE: November 12, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 326 specifies that a person, who through culpable negligence exposes another person to personal injury by driving under the influence of alcohol or drugs (DUI) while accompanied by a passenger younger than 18 years of age in the vehicle, commits a first degree misdemeanor under s. 784.05, F.S., the culpable negligence statute. (Currently, if a prosecutor wants to charge a person with culpable negligence under this factual scenario, the penalty is a second degree misdemeanor under s. 784.05(1), F.S.)

This bill substantially amends section 784.05 of the Florida Statutes.

II. Present Situation:

Culpable negligence is punishable under s. 784.05, F.S., as a second or first degree misdemeanor, depending on whether actual personal injury results. Someone who exposes another person to personal injury through culpable negligence commits a second degree misdemeanor (punishable by a fine not exceeding \$500 and imprisonment not exceeding 60 days). s. 784.05(1), F.S.

Someone who inflicts actual personal injury on another person through culpable negligence commits a first degree misdemeanor (punishable by a fine not exceeding \$1,000 and imprisonment not exceeding one year). s. 784.05(2), F.S.

Culpable negligence is also punishable as a third degree felony under the following circumstance: when someone exposes another person to personal injury through culpable negligence by storing or leaving a loaded firearm within the reach or easy access of a minor and

the minor uses that firearm to inflict injury or death upon himself or herself or another person.
s. 784.05(3), F.S.

The purpose of the culpable negligence statute, according to the Florida Supreme Court in *State v. Greene*, 348 So.2d 3 (1977), is to punish behavior creating an “unreasonably great risk of harm to others.” *Id.* The Court defined culpable negligence as conduct showing reckless disregard for human life, or for the safety of other persons, or conduct showing an entire lack of care which raises a presumption of indifference to the consequences. *Id.* at 4.

Under s. 316.193(4), F.S., a person convicted of driving under the influence of alcohol or drugs to the extent his or her normal faculties are impaired (DUI) who has passengers under 18 years of age in the vehicle at the time of the offense can be punished by a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months for a first offense; a fine ranging from \$1,000 to \$2,000 and imprisonment not exceeding 12 months for a second conviction; and a fine not less than \$2,000 for a third conviction.

Under the culpable negligence statute, driving under the influence with passengers less than 18 years of age in the vehicle could most likely be prosecuted as a second degree misdemeanor, which is a lesser penalty than the current penalty under s. 316.193(4), F.S.

III. Effect of Proposed Changes:

Senate Bill 326 would specify that a person, who through culpable negligence exposes another person to personal injury by driving under the influence of alcohol or drugs while accompanied by a passenger younger than 18 years of age in the vehicle, commits a first degree misdemeanor under s. 784.05, F.S. (Currently, if a prosecutor wants to charge a person with culpable negligence under this factual scenario, the penalty is a second degree misdemeanor.) It would also provide a potentially higher imprisonment period than is currently authorized under s. 316.193(4), F.S., (up to one year rather than up to nine months for driving under the influence with minor passengers).

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:

A person who commits a violation under the bill would be subjected to a fine not exceeding \$1,000.

C. Government Sector Impact:

Any fiscal impact on local jails is indeterminate but probably minimal under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
