

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: December 09, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Matthews</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill enhances the criminal penalty for culpable negligence from a second degree to a first degree misdemeanor if a person *exposes* another to personal injury while driving under the influence of alcohol or drugs and while accompanied by a passenger younger than 18 years of age.

This bill substantially amends section 784.05 of the Florida Statutes.

II. Present Situation:

Culpable negligence involves more than a failure to use ordinary care for others. It is committed with an utter disregard for the safety of others¹ or involves a person consciously doing an act or following a course of conduct that the person must have known, or reasonably should have known, was likely to cause death or great bodily harm. Section 784.05, F.S., is the governing culpable negligence statute, and includes the following offenses:

- A person who *inflicts* actual personal injury on another person through culpable negligence commits a first degree misdemeanor. *See* s. 784.05(2), F.S. A first degree misdemeanor is punishable by a maximum fine of \$1,000 and a maximum imprisonment of one year.²
- A person who *exposes* another person to personal injury through culpable negligence commits a second degree misdemeanor. *See* s. 784.05(1), F.S. A second degree misdemeanor is punishable by a fine of \$500 or less and a maximum imprisonment of 60 days.³

¹ *See State v. Greene*, 348 So.2d 3, 4 (Fla. 1977) purpose of statute is to punish behavior creating an “unreasonably great risk of harm to others” and raises a presumption of indifference to the consequences.

² *See* ss. 775.082 and 775.083, F.S.

- A person who *exposes* another to personal injury through culpable negligence by storing or leaving a loaded firearm within the reach or easy access of a minor (that is, someone who is less than 16 years of age)⁴ and the minor uses that firearm to *inflict* injury or death upon himself or herself or another person, that person commits a third degree felony. There are exceptions.⁵ A third degree felony is punishable by a maximum fine of \$5,000 and maximum imprisonment of five years.⁶

Currently, no enhanced penalty is imposed if a person *exposes* someone to injury while driving impaired due to drugs or alcohol and had a minor in the vehicle. However, a number of related offenses exist in current law. Under the state's traffic laws in chapter 316, F.S., a person convicted of driving impaired or intoxicated due to alcohol or drugs while having passengers who are younger than 16 years of age may be punished by a fine ranging from \$500 to \$1,000 and a maximum sentence of nine months in jail.⁷ If the person is convicted of the same offense a second time, the fine ranges from \$1,000 to \$2,000 and a maximum sentence of 12 months in jail. If the person is convicted of the same offense a third or subsequent time, the fine is a minimum of \$2,000. Additionally, any person convicted under s. 316.193(4), F.S., must have an ignition interlock device installed for a maximum of six months for the first conviction, and for at least two years for a second offense if the person qualifies for a permanent or restricted license. Such person is also ordered to monthly reporting probation.

Another related offense occurs under s. 782.071, F.S., for vehicular homicide. Vehicular homicide is a second degree felony that involves the killing of a human being or viable fetus through the operation of a motor vehicle in a reckless manner likely to cause the death of or great bodily harm to another person. The offense becomes a third degree felony offense if the person knew or should have known the accident occurred and failed to give information and render aid.

If a culpable negligence offense results in actual injury or death, such offense may be considered a lesser included offense for murder, manslaughter or vehicular homicide under specified circumstances. *See Florida Standard Jury Instructions in Criminal Cases*, Fourth Edition.

III. Effect of Proposed Changes:

This bill enhances the criminal penalty from a second degree to a first degree misdemeanor offense when someone *exposes* another person to personal injury through culpable negligence if the person is driving under the influence of alcohol or drugs and while accompanied by a passenger younger than 18 years of age. The enhanced penalty applies regardless of whether injury or death is actually *inflicted* which is in contrast to the enhanced penalty when the culpable negligence offense involves a firearm obtained or used by a minor whose actions must have *inflicted* injury or death.

³ Id.

⁴ See 784.05(4), F.S.

⁵ See s. 784.05(3), F.S. It is not a third degree felony offense if the firearm was stored or left in a secure or locked place, the firearm was obtained through unlawful entry, the injuries resulted from a target, sporting or hunting accident, or the possession by the minor occurred incidental to an armed forces personnel's performance of official duties.

⁶ Id at fnt. 2.

⁷ See s. 316.193(4),

This enhanced offense would result in a prison sentence that exceeds the maximum sentence of nine months punishable under the related offense found in s. 316.193(4), F.S.

This bill takes effect July 1, 2004.

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:

The presence of a minor as a passenger in a vehicle driven by a person under the influence will subject that person to an enhanced penalty for culpable negligence. Such persons could face up to one year in jail in lieu of nine months maximum if convicted under this statutory offense even if no injury was inflicted.

C. Government Sector Impact:

Any fiscal impact on local jails is indeterminate. The bill will provide prosecutors with an additional offense to charge with enhanced penalties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates two different age standards when a culpable negligence offense involves a minor. If the exposure to injury results from a firearm used or obtained by a minor which subsequently inflicts injury, the enhanced penalty only applies if the minor is younger than 16 years of age. If the exposure to injury arises in the presence of a minor in a vehicle driven by an impaired person, the enhanced penalty applies if the minor is younger than 18 years of age.

VIII. Amendments:

None.

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