

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 102

INTRODUCER: Transportation Committee and Senator Diaz de la Portilla and others

SUBJECT: Drivers Leaving the Scene of a Crash

DATE: January 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Dugger	Cannon	CJ	Pre-meeting
3.			ATD	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 102 creates the “Aaron Cohen Life Protection Act.” The bill addresses a perceived or potential incentive in current law to leave the scene of a crash by:

- Punishing leaving the scene of a crash resulting in serious bodily injury to a person as a second degree felony, rather than a third degree felony;
- Imposing a mandatory minimum term of imprisonment of four years for a driver convicted of leaving the scene of a crash resulting in the death of a person;
- Increasing the mandatory minimum term of imprisonment from two to four years for a person convicted of leaving the scene of a crash resulting in the death of a person while driving under the influence (DUI);
- Imposing a minimum driver license revocation period of at least three years and driver education requirements for leaving the scene of a crash;
- Ranking offenses for leaving the scene of a crash one level higher than specified in the Criminal Punishment Code if the victim of the offense was a “vulnerable road user” (if no serious injury occurs, a Level 5 offense becomes a Level 6 offense; if there is serious injury, a Level 6 offense becomes a Level 7 offense; and if death occurs, a Level 7 offense becomes a Level 8 offense);
- Authorizing a defendant to move to depart from the mandatory minimum term of imprisonment for leaving the scene of a crash resulting in death, unless the violation was committed while the defendant was DUI; authorizing the state to object; and authorizing a

court to grant the motion, the basis for which must be stated in open court, upon a finding that imposition of the mandatory minimum would constitute or result in an injustice.

II. Present Situation:

Aaron Cohen was an experienced cyclist and avid runner who was 36 years old when, on February 15, 2012, he was struck and killed in a hit-and-run accident on the Rickenbacker Causeway, which leads to Key Biscayne in Miami-Dade County.¹

The driver of the vehicle that struck Aaron Cohen, Michel Traverso, fled the scene of the accident and eventually turned himself in the following day. Aaron eventually died as a result of his injuries, leaving behind a wife and two young children.

Evidence in Traverso's prosecution later showed that he'd been at a local bar before getting behind the wheel of his car that morning ... However prosecutors had no direct evidence that Traverso was actually intoxicated at the time his vehicle struck Aaron Cohen, which would have been necessary for a DUI manslaughter prosecution.

Traverso eventually pled guilty to violating Florida's leaving the scene of an accident (LSA) law, and was sentenced to 21 months in jail.²

Leaving the Scene of a Crash

Section 316.027, F.S., requires the driver of a vehicle involved in a crash occurring on public or private property and resulting in injury to or death of a person to immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and remain at the scene until the driver fulfills the requirements of s. 316.062, F.S.

Section 316.062, F.S., requires the driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property driven or attended by any person to:

- Give his or her name, address, and vehicle registration number;
- Provide a driver's license, upon request and if available, to any person injured in the crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash;
- Provide a driver's license, upon request, to any police officer at the scene or who is investigating the crash;
- Render to any injured person reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person; and

¹ SR 932 (2013 Reg. Session).

² <http://aaroncohenlaw.org/?page/114045/read-this---the-lsa-gap-in-florida>; Last visited December 17, 2013.

- Having stopped and remained at the scene to provide the required information, if none of the persons identified are able to receive the information, report the crash to the nearest police authority and submit the required information.

Injury

For crashes resulting in injury to a person, a driver found in willful violation of s. 316.027, F.S., commits a third degree felony punishable by a term of imprisonment not exceeding five years,³ a possible additional fine not exceeding \$5,000,⁴ or imposition under certain circumstances of an extended term of imprisonment for habitual felony offenders, habitual violent felony offenders, three-time felony offenders, and violent career criminals.⁵ Proof that the driver caused or contributed to causing injury to a person is not required for a conviction.⁶

Death

For crashes resulting in the death of a person, a driver found in willful violation commits a first degree felony punishable by a term of imprisonment up to 30 years,⁷ a possible additional fine up to \$10,000,⁸ or imposition of an extended term of imprisonment under certain circumstances for certain offenders.⁹ Again, proof that the driver caused or contributed to causing the death of a person is not required for a conviction, and current law reflects no mandatory minimum sentence for these violations.

However, a driver must be sentenced to a mandatory minimum term of imprisonment of two years if the violation occurs while driving under the influence of alcoholic beverages, certain chemical substances, or certain controlled substances when affected to the extent that the person's normal faculties are impaired, or when the person has a 0.08 blood- or breath-alcohol level.¹⁰

The Department of Highway Safety and Motor Vehicles (DHSMV) is required to revoke the driver's license of a person convicted of a violation of s. 316.027, F.S. Further, with respect to a crash involving death or a bodily injury requiring transport to a medical facility, a convicted driver must also attend a driver improvement course approved by the DHSMV to maintain driving privileges.¹¹ If a crash causes or results in the death of another person, the convicted person may also be required by the court to serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents.

³ Section 775.082, F.S.

⁴ Section 775.083, F.S.

⁵ Section 775.084, F.S.

⁶ See *Lawrence v. State*, 801 So.2d 293, 295 (Fla. 2d DCA 2001) and *Kelly v. State*, 987 So.2d 1237, 1239 (Fla. 2d DCA 2008).

⁷ Section 775.082, F.S.

⁸ Section 775.083, F.S.

⁹ Section 775.084, F.S.

¹⁰ Section 316.193(1), F.S.

¹¹ Section 322.0261, F.S.

Fleeing or Attempting to Elude a Law Enforcement Officer

Under s. 316.1935, F.S., any person who

- In the course of unlawfully leaving or attempting to leave the scene of a crash in violation of ss. 316.027 and 316.062, F.S.;
- Having knowledge of an order to stop by a law enforcement officer;
- Willfully refuses or fails to stop or, having stopped in knowing compliance, willfully flees in an attempt to elude the officer; and
- As a result of such fleeing or eluding:
 - *Causes injury to another person or damage to another's property* commits aggravated fleeing or eluding, a second degree felony, punishable by a term of imprisonment up to 15 years,¹² a possible additional fine up to \$10,000,¹³ or imposition of an extended term of imprisonment under certain circumstances for certain offenders;¹⁴ or
 - *Causes serious bodily injury or death to another person*, including any law enforcement officer involved in attempting to stop the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony, punishable by a term of imprisonment up to 30 years,¹⁵ a possible additional fine up to \$10,000,¹⁶ or imposition of an extended term of imprisonment under certain circumstances for certain offenders.¹⁷

In both cases, a person may also be charged with the offenses under ss. 316.027 and 316.062, F.S., relating to unlawfully leaving the scene of a crash. A court is required to sentence any person convicted of committing aggravated fleeing or eluding *with serious bodily injury or death* to a mandatory minimum sentence of 3 years imprisonment.

Driving Under the Influence

Section 316.193(1), F.S., provides a person is guilty of driving under the influence when that person is driving a vehicle under the influence of alcoholic beverages, certain chemical substances, or certain controlled substances when affected to the extent that the person's normal faculties are impaired, or when the person has a 0.08 blood- or breath-alcohol level.

Serious Bodily Injury

Any person under the influence as described above and who by reason of operating a vehicle *causes or contributes to causing serious bodily injury* to another,¹⁸ commits a third degree felony¹⁹ punishable by a term of imprisonment not exceeding five years,²⁰ a possible additional fine not exceeding \$5,000,²¹ or imposition under certain circumstances of an extended term of

¹² Section 775.082, F.S.

¹³ Section 775.083, F.S.

¹⁴ Section 775.084, F.S.

¹⁵ Section 775.082, F.S.

¹⁶ Section 775.083, F.S.

¹⁷ Section 775.084, F.S.

¹⁸ Defined to mean "an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

¹⁹ Section 316.193(3)(c)2., F.S.

²⁰ Section 775.082, F.S.

²¹ Section 775.083, F.S.

imprisonment for habitual felony offenders, habitual violent felony offenders, three-time felony offenders, and violent career criminals.²²

Death

Any person under the influence as described above and who by reason of operating a vehicle *causes or contributes to causing the death*²³ of any human being or unborn quick child commits a second degree felony and DUI manslaughter,²⁴ punishable by a term of imprisonment up to 15 years,²⁵ a possible additional fine up to \$10,000,²⁶ or imposition of an extended term of imprisonment under certain circumstances for certain offenders.²⁷

If, at the time of the crash, the person knew or should have known the crash occurred and the person failed to give information and render aid as required by s. 316.062, F.S., that person commits a first degree felony and DUI manslaughter, punishable by a term of imprisonment up to 30 years,²⁸ a possible additional fine up to \$10,000,²⁹ or imposition of an extended term of imprisonment under certain circumstances for certain offenders.³⁰

A person convicted of DUI manslaughter must serve a mandatory minimum term of imprisonment of four years.

Thus, in cases involving DUI and leaving the scene of a crash resulting in death, current law may provide an incentive to leave because the mandatory minimum sentence of four years for DUI manslaughter is avoided if a DUI charge is avoided by leaving the scene. A person driving DUI may also view an attempt to flee or elude in the process of leaving the scene as advantageous because, if successful in fleeing or eluding, a DUI charge is again avoided, and the mandatory minimum for fleeing and eluding is one year less than the mandatory minimum of four years for DUI manslaughter.

Driver License/Periods of Suspension or Revocation:

Section 322.28, F.S., provides for certain driver license suspension and revocation periods and, unless otherwise provided, subsection (1) limits the authority of the DHSMV to suspend or revoke a driver's license to one year. Thus, the revocation period for violations of s. 316.027, F.S., whether the crash resulted in injury or death (in the absence of DUI), is one year.

²² Section 775.084, F.S.

²³ See *Magaw v. State*, 537 So.2d 564, 567 (Fla. 1989): “[Under the DUI manslaughter statute,] the state is not required to prove that the operator’s drinking caused the accident. The statute requires only that the operation of the vehicle ... caused the accident.”

²⁴ Section 316.193(3)(c)3., F.S.

²⁵ Section 775.082, F.S.

²⁶ Section 775.083, F.S.

²⁷ Section 775.084, F.S.

²⁸ Section 775.082, F.S.

²⁹ Section 775.083, F.S.

³⁰ Section 775.084, F.S.

The revocation period for aggravated fleeing and eluding resulting in injury to another person, damage to the property of another person, or serious bodily injury or death to another person is not less than one year nor more than five years.³¹

Section 322.28(4), F.S., currently requires a court to revoke for a minimum of three years the driver license of a person convicted of DUI under s. 316.193(3)(c)2., F.S., who by vehicle operation *caused or contributed to causing serious bodily injury to another*, as defined in s. 316.1933, F.S. That section defines “serious bodily injury” to mean “an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” If a conviction under s. 316.193(3)(c)2., F.S., involving serious bodily injury, also constitutes a previous conviction,³² the period of suspension or revocation graduates based on whether the offender has prior convictions/suspensions.³³ A court is required to permanently revoke the driver license of any person convicted of DUI manslaughter in violation of s. 316.193, F.S.

Thus, under current law, in cases involving DUI and leaving the scene of a crash resulting in death, while revocation of the driver’s license for violations under s. 316.027, F.S., and s. 316.193, F.S., is permanent, a person driving DUI may similarly view an attempt to flee or elude in the process of leaving the scene as advantageous because, if successful in fleeing or eluding, a DUI charge is avoided. The period of license revocation in such event would be not less than one year nor more than five, as opposed to permanent.

Criminal Punishment Code/Offense Severity Ranking Chart

The Criminal Punishment Code (Code)³⁴ is Florida’s framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors.

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible sentence. The permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense and any additional offenses before the court for sentencing. The court is permitted to impose sentences concurrently or consecutively.

The Code includes a list of ‘mitigating’ factors. If a mitigating factor is found by the sentencing court, the court may decrease an offender’s sentence below the lowest permissible sentence (a “downward departure”). A mandatory minimum term is not subject to these mitigating factors.³⁵

³¹ Section 316.1935(5), F.S.

³² See s. 322.28(2)(a) and (d), F.S.

³³ Section 322.28(2)(d), F.S. See also s. 322.26, F.S.

³⁴ Sections 921.002 - 921.0027, F.S.

³⁵ See *State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

Mandatory minimum terms impact Code sentencing. If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.³⁶

III. Effect of Proposed Changes:

The bill generally addresses the incentive in current law to leave the scene of a crash by imposing mandatory minimum sentences where none currently exist and, particularly, with respect to cases involving DUI and death, by increasing the penalty for leaving the scene.

Section 1 provides that the act may be cited as the “Aaron Cohen Life Protection Act.”

Section 2 amends s. 316.027, F.S., as follows:

- Creates a new subsection (1) and defines “serious bodily injury” as the term is currently defined in s. 316.1933, F.S., to mean an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ; and
- Defines “vulnerable road user” to mean:
 - A pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
 - A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
 - A person riding an animal; or
 - A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:
 - A farm tractor or similar vehicle designed primarily for farm use;
 - A skateboard, roller skates, in-line skates;
 - A horse-drawn carriage;
 - An electric personal assistive mobility device; or
 - A wheelchair.
- Revises the existing provisions requiring a person to stop and remain at the scene of a crash to address separately crashes resulting in injury to a person *other than serious bodily injury*, crashes resulting in serious bodily injury to a person, and crashes resulting in death of a person; and to impose punishment as follows:
 - Leaving the scene of a crash resulting in injury to a person other than serious bodily injury continues to be punished as a third degree felony.

³⁶ Rule 3.704(26) (“The Criminal Punishment Code”), Florida Rules of Criminal Procedure. A trafficking mandatory minimum term is a minimum sentencing ‘floor’ for the court and there is no prohibition to gain-time. If the court only sentences the defendant to the mandatory term specified by statute, the Department of Corrections (DOC) establishes an 85% minimum service date on the term and the offender is subject to s. 944.275(4)(b)3., F.S., which does not allow release prior to serving a minimum of 85% of the sentence. If the court imposes a sentence that exceeds the mandatory term specified by statute, the DOC establishes an 85% minimum service date on the sentence. *See Mastay v. McDonough*, 928 So.2d 512 (Fla. 1st DCA 2006) (Section 893.135, F.S., does not preclude earning gain-time during the mandatory term as long as it does not result in the prisoner’s release prior to serving a minimum of 85% of the sentence).

- Leaving the scene of a crash resulting in serious bodily injury to a person is punished as a second degree felony, as opposed to the current third degree.
- Leaving the scene of a crash resulting in the death of a person continues to be punished as a first degree felony, but a mandatory minimum term of imprisonment of four years is imposed.
- If the violation occurs while the driver is also DUI, the current mandatory minimum sentence is increased from two years to four years, the same as for DUI manslaughter.
- Requires a driver found in violation of leaving the scene of a crash involving injury, serious bodily injury, or death to:
 - Have his or her driver license revoked for a minimum of three years as provided in s. 322.28(4), F.S.,
 - Participate in a victim's impact panel session in a judicial circuit if such panel exists, and
 - Participate in a driver education course relating to the rights of vulnerable road users relative to vehicles on the roadway.
- Ranks offenses for leaving the scene of a crash one level higher than specified in the Code if the victim of the offense was a "vulnerable road user," resulting in higher total sentence points and a higher lowest permissible sentence (if no serious injury occurs, a Level 5 offense becomes a Level 6 offense; if there is serious injury, a Level 6 offense becomes a Level 7 offense; and if death occurs, a Level 7 offense becomes a Level 8 offense); and
- Allows a defendant to move to depart from the four-year mandatory minimum sentence for leaving the scene of a crash with a death, unless the defendant was driving DUI at the time of the violation; authorizes the state to object to the departure; allows the court to depart only if it finds that a factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term would constitute or result in an injustice; and requires the court to state the basis for granting a departure in open court.

The bill also makes technical and conforming changes to s. 316.027, F.S.

Section 3 amends s. 322.0261(2), F.S., to require the DHSMV to include in its approved driver improvement course curriculum instruction specifically addressing the rights of vulnerable road users relative to vehicles on the roadway.

Section 4 amends s. 322.28(4), F.S., to require a court to revoke the driver license of a person convicted of leaving the scene of a crash for the same period of time, a minimum of three years; and to incorporate the minimum revocation period into provisions directing the DHSMV to revoke the driver license for such period in the event the period of revocation was not specified by the court at the time of imposing sentence or within 30 days thereafter.

Section 5 reenacts s. 322.34(6), F.S., relating to driving while a driver license is suspended, revoked, canceled, or disqualified, to incorporate the amendment to s. 322.28, F.S., in a reference thereto, and makes a technical change.

Section 6 amends s. 921.0022, F.S., to revise the offense severity ranking chart to correct the cross reference to the appropriate subsection, paragraph, and description of s. 316.027, F.S., for

leaving the scene of a crash with injury *other than serious bodily injury*, which remains a Level 5 third degree felony; to include the second degree felony for a violation of leaving the scene of a crash involving serious bodily injury as a Level 6 offense; and to revise the cross reference to the offense of leaving the scene of a crash resulting in death, which remains a Level 7 first degree felony. As noted, if the victim is a “vulnerable road user,” offenses for leaving the scene of a crash are ranked one level higher.

Section 7 provides the act takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate, except that the DHSMV advises the bill will require approximately 30 non-recurring system programming hours, the cost of which will be absorbed within existing resources.

The Criminal Justice Impact Conference (CJIC) met on January 30, 2014 and found that the bill's impact upon prison beds is also indeterminate. The Office of Economic and Demographic Research (EDR) stated that the proposed changes to s. 316.027, F.S., will increase both the felony degree and the offense severity level for leaving the scene of an accident involving serious bodily injury, but the percentage of cases that currently involve “serious” bodily injury is indeterminable. According to the EDR, incarceration rates and average sentence lengths for the current and proposed offenses related to leaving the scene of an accident involving serious bodily injury are as follows:

Incarceration rate for all 3rd degree, level 5 offenses	22.8%
Average sentence length for all 3rd degree, level 5 offenses	33.0 months
Incarceration rate for all 2nd degree, level 6 offenses	48.2%
Average sentence length for all 2nd degree, level 6 offenses	57.8 months

The EDR states that the differences in these two measures suggest that the proposed changes involving serious injury may result in additional prison admissions and in longer sentences for some offenders currently being sentenced to prison, but the lack of data to estimate these changes is what results in an indeterminate impact.

In addition, offenders currently sentenced under s. 316.027(1)(b), F.S., leaving the scene of an accident involving death, will be subject to a 4-year mandatory minimum sentence under the bill. However, the EDR said it is not possible to determine the percentage of current offenders who receive the 2-year mandatory minimum sentence for leaving the scene while DUI. The current average sentence length for all of the offenders in this offense is 91.9 months. Nearly 75% of these sentences are 48 months or longer suggesting that the impact from the bill will be limited, but the lack of data to estimate these changes also results in an indeterminate impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 316.027, 322.0261, 322.28, 322.34, and 921.0022.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on January 9, 2014:

The CS differs from the original bill primarily as follows:

- Removes the three-year and seven-year mandatory minimum sentences for leaving the scene of a crash with injury or with serious bodily injury, respectively;
- Imposes a mandatory minimum sentence of four years for leaving the scene of a crash with a death, rather than ten years;
- Increases the mandatory minimum sentence for leaving the scene with a death while DUI from two to four years, the same as for DUI manslaughter;
- Provides for ranking one level higher than specified in the Code offenses for leaving the scene of a crash if the victim of the offense was a “vulnerable road user”; and allows a defendant to move for departure from the four-year mandatory minimum

sentence for leaving the scene with a death in the absence of DUI; authorizes the state to object; requires the court to state in open court the basis for granting such motion, upon a finding that a factor, consideration, or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice.

B. Amendments:

None.