

**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.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: SB 102

INTRODUCER: Senator Diaz de la Portilla and others

SUBJECT: Drivers Leaving the Scene of a Crash

DATE: December 11, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	<b>Pre-meeting</b>
2.			CJ	
3.			ATD	
4.			AP	

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**I. Summary:**

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:

- imposing mandatory minimum sentences, where none currently exist, for certain violations involving leaving the scene of a crash;
- imposing a minimum driver license revocation period of at least three years and driver education requirements for such violations;
- punishing leaving the scene of a crash resulting in serious bodily injury to a person as a second degree felony, as opposed to a third degree felony; and
- increasing the mandatory minimum term of imprisonment for leaving the scene of a crash resulting in the death of a person while driving under the influence from two years to ten.

**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.<sup>1</sup>

“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

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<sup>1</sup> SR 932 (2013 Reg. Session).

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.”<sup>2</sup>

### **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
- 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,<sup>3</sup> a possible additional fine not exceeding \$5,000,<sup>4</sup> 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.<sup>5</sup> Proof that the driver caused or contributed to causing injury to a person is not required for a conviction.<sup>6</sup> Current law reflects no mandatory minimum sentence for these violations, except as may be applicable under the provisions of s. 775.084, F.S., relating to habitual felony offenders, etc.

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

<sup>3</sup> Section 775.082, F.S.

<sup>4</sup> Section 775.083, F.S.

<sup>5</sup> Section 775.084, F.S.

<sup>6</sup> 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).

*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,<sup>7</sup> a possible additional fine up to \$10,000,<sup>8</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders.<sup>9</sup> 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, except as may be applicable under the provisions of s. 775.084, F.S., relating to habitual felony offenders, etc.

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.<sup>10</sup>

The 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 Department of Highway Safety & Motor Vehicles (DHSMV) to maintain driving privileges.<sup>11</sup> 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.

*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,<sup>12</sup> a possible additional fine up to \$5,000,<sup>13</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders;<sup>14</sup> 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

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<sup>7</sup> Section 775.082, F.S.

<sup>8</sup> Section 775.083, F.S.

<sup>9</sup> Section 775.084, F.S.

<sup>10</sup> Section 316.193(1), F.S.

<sup>11</sup> Section 322.0261, F.S.

<sup>12</sup> Section 775.082, F.S.

<sup>13</sup> Section 775.083, F.S.

<sup>14</sup> Section 775.084, F.S.

imprisonment up to 30 years,<sup>15</sup> a possible additional fine up to \$10,000,<sup>16</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders.<sup>17</sup>

In both cases, a person may also be charged with the offenses under ss. 316.027 and 316.062, 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,<sup>18</sup> commits a third degree felony<sup>19</sup> punishable by a term of imprisonment not exceeding five years,<sup>20</sup> a possible additional fine not exceeding \$5,000,<sup>21</sup> 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.<sup>22</sup> Current law reflects no mandatory minimum sentence for these violations, except as may be applicable under the provisions of s. 775.084, F.S., relating to habitual felony offenders, etc.

#### *Death*

Any person under the influence as described above and who by reason of operating a vehicle *causes or contributes to causing the death*<sup>23</sup> of any human being or unborn quick child commits a second degree felony and DUI manslaughter,<sup>24</sup> punishable by a term of imprisonment up to 15 years,<sup>25</sup> a possible additional fine up to \$5,000,<sup>26</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders.<sup>27</sup>

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<sup>15</sup> Section 775.082, F.S.

<sup>16</sup> Section 775.083, F.S.

<sup>17</sup> Section 775.084, F.S.

<sup>18</sup> 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."

<sup>19</sup> Section 316.193(3)(c)2., F.S.

<sup>20</sup> Section 775.082, F.S.

<sup>21</sup> Section 775.083, F.S.

<sup>22</sup> Section 775.084, F.S.

<sup>23</sup> 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."

<sup>24</sup> Section 316.193(3)(c)3., F.S.

<sup>25</sup> Section 775.082, F.S.

<sup>26</sup> Section 775.083, F.S.

<sup>27</sup> Section 775.084, F.S.

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,<sup>28</sup> a possible additional fine up to \$10,000,<sup>29</sup> or imposition of an extended term of imprisonment under certain circumstances for certain offenders.<sup>30</sup>

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.

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.<sup>31</sup>

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,<sup>32</sup> the period of suspension or revocation graduates based on whether the offender has prior convictions/suspensions.<sup>33</sup> 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.

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<sup>28</sup> Section 775.082, F.S.

<sup>29</sup> Section 775.083, F.S.

<sup>30</sup> Section 775.084, F.S.

<sup>31</sup> Section 316.1935(5), F.S.

<sup>32</sup> See s. 322.28(2)(a) and (d), F.S.

<sup>33</sup> Section 322.28(2)(d), F.S. See also s. 322.26, F.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)<sup>34</sup> 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.<sup>35</sup>

Mandatory minimum terms impact Code sentencing. "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply."<sup>36</sup>

### **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:

<sup>34</sup> Sections 921.002 - 921.0027, F.S.

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

<sup>36</sup> 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).

- 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 up 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.
  - 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. However, if the violation occurs while the driver is also DUI, the mandatory minimum sentence is increased from two years to ten years.
- A driver found in violation under any of the three scenarios above is required to serve a mandatory minimum term of imprisonment of:
  - three years if the crash results in injury to a person,
  - seven years if the crash results in serious bodily injury to a person, or
  - ten years if the crash results in the death of a person.
- A convicted person must also:
  - 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.

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

**Section 3** amends s. 322.28(4), F.S., to require a court to revoke the driver license of a person convicted of violating any of the three scenarios above 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 4** 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 5** amends s. 921.0022, F.S., to revise the offense severity ranking chart 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 offense.

**Section 6** 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.



## VI. Technical Deficiencies:

Current s. 921.0022(3)(e), F.S., lists a violation of s. 316.027(1)(a), F.S., as a Level 5 third degree felony, described as “Accidents involving personal injuries, failure to stop; leaving scene.” Under the bill, subsection (1)(a) becomes subsection (2)(a), relating to leaving the scene of a crash resulting in “injury to a person *other than serious bodily injury*.” A technical amendment to revise the reference to the new subsection and the new description appears to be in order.

The DHSMV notes the following with respect to the proposed amendments to s. 316.027, F.S., requiring participation in a victim’s impact panel session or participation in a driver education course relating to the rights of vulnerable road users relative to vehicles on the roadway:

- The proposed statute does not stipulate that the driver education course is mandatory in the event no victim’s impact panel session exists, does not provide driver education course content requirements, does not identify which agency will administer the course, does not provide a time frame within which the course must be completed, and does not provide any penalty or other consequence for failure to complete the course requirement within a given time frame.
- The bill provides an extensive definition of a new term, “vulnerable road user.” This term is subsequently only used once, in the requirement that certain offenders participate in a driver education course “relating to the rights of vulnerable road users relative to vehicles on the roadway.” There could be an alternative method of providing the course content without creating a new definition.<sup>37</sup>

## VII. Related Issues:

As noted, violations under s. 316.027, F.S., do not require proof that a driver who leaves the scene of a crash caused or contributed to causing the death of a person by operation of a vehicle, while convictions for DUI manslaughter under s. 316.193, F.S., require such proof.

Thus, under the bill, a person driving DUI who is “involved” in a crash resulting in death, whether or not that person caused or contributed to causing the death, and who leaves the scene of the crash, is subject to a mandatory minimum term of imprisonment of 10 years. However, a person who is convicted of DUI manslaughter because that person has been proven to have caused or contributed to causing a death by reason of operating a vehicle while DUI, is subject to a mandatory minimum sentence of only four years.

## VIII. Statutes Affected:

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

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<sup>37</sup> The DHSMV 2014 Legislative Bill Analysis, SB 102, on file in the Senate Transportation Committee.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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