

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 196

SPONSOR: Criminal Justice Committee and Senator Laurent

SUBJECT: DUI/Restitution

DATE: March 28, 2000

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|---------------------|
| 1. | <u>Dugger</u> | <u>Cannon</u> | <u>CJ</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | <u>FP</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

The CS would expressly provide in the DUI statute that the period of probation allowed in misdemeanor DUI cases could be extended from one year to five years for the purpose of completing payment of restitution. The additional period of probation could apply whether or not incarceration was included as a condition of probation. (The period of incarceration would be unaffected by the CS.) If, however, the defendant satisfied all financial obligations within the first year of probation and otherwise complied with the terms of probation, the probationary period would be terminated.

This CS would substantially amend s. 316.193 and 948.15 of the Florida Statutes.

II. Present Situation:

DUI penalties. Section 316.193, F.S., proscribes the offense of driving under the influence of alcohol or drugs to the extent normal faculties are impaired or driving with a blood or breath alcohol level of .08 percent or higher (DUI). Penalties for DUI vary according to the frequency of previous convictions, the offender's blood alcohol level when arrested, and whether serious injury or death results.

Generally, modified misdemeanor penalties apply when there has been no property damage or personal injury (commonly referred to as "simple" DUI) and when there have been less than four DUI convictions. For example, a first-time offender is subject to a fine ranging from \$250 to \$500, as well as being subject to serving up to 6 months in county jail. **The offender must also be on probation for up to 1 year** and participate in 50 hours of community service. However, if the convicted offender's *BAL* is *.20 percent or higher*, or a passenger under 18 years of age is present in the vehicle, then the *penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months in jail.*

A second “simple” DUI conviction carries a fine ranging from \$500 to \$1,000 and possible imprisonment up to 9 months in jail. However, if that conviction occurs within 5 years of a previous DUI conviction, then there is a mandatory imprisonment time of at least 10 days. At least 48 hours of this confinement must be consecutive. *Enhanced penalties* also apply when the offender’s *BAL* is *.20 percent or higher*, or when a passenger under the age of 18 is present in the vehicle to include a *fine ranging from \$1,000 to \$2,000 and imprisonment not exceeding 12 months*.

A third or subsequent DUI conviction carries a fine ranging from \$1,000 to \$2,500 and possible imprisonment up to 12 months in jail. However, if that conviction occurs within 10 years of a previous DUI conviction, then there is a 30-day minimum mandatory imprisonment sentence. At least 48 hours of this confinement must be consecutive. *Enhanced penalties* also apply when the offender’s *BAL* is *.20 percent or higher*, or when a passenger under the age of 18 is present in the vehicle to include a *fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months*.

A fourth or subsequent DUI conviction results in a third degree felony penalty, which means a minimum fine of \$1,000 but not exceeding \$5,000 and imprisonment up to 5 years. This felony is ranked as a level 6 offense in s. 921.0012, F.S., which means that the minimum penalty when there are no other factors at sentencing such as prior record, is a non-state prison sanction and the maximum prison penalty is 13.4 months. Under the Criminal Punishment Code, which becomes effective for offenses committed on or after October 1, 1998, the penalty ranges from a non-state prison sanction up to 5 years in prison.

A DUI offense involving property damage results in a first degree misdemeanor penalty, punishable by a fine not exceeding \$1,000 and/or imprisonment up to 1 year in jail. A DUI offense involving serious injury results in a third degree felony, punishable by a fine not exceeding \$5,000 and/or imprisonment up to 5 years. A DUI offense resulting in death is a second degree felony, punishable by a fine not exceeding \$10,000 and/or imprisonment up to 15 years.

Restitution. Crime victims have the right to recover damages against defendants through civil actions. However, “[s]entencing judges have long used their discretion in imposing criminal sanctions to give victims of crime an additional benefit by conditioning criminal sanctions upon payment of restitution.” *Daniels v. State*, 581 So.2d 970 (Fla. 5th DCA 1991).

Section 775.089, F.S., sets out the parameters for imposing restitution as part of a criminal case. Section 775.089, F.S., requires the trial court to order the defendant to make restitution to the victim, in addition to any punishment. Section 775.089, F.S., defines victim and describes the type of restitution to which a victim is entitled.

Time period to make restitution; generally. Subsection (3) of s. 775.089, F.S., provides payment schedules for making restitution. It authorizes the court to require the defendant to make restitution within specified periods and provides that the end of such period or the last restitution installment shall not be later than:

1. The end of the period of probation if probation is ordered;

2. Five years after the end of the term of imprisonment imposed if the court does not order probation; or
3. Five years after the date of sentencing in any other case.

“If not otherwise provided by the court under this subsection, restitution must be made immediately.” s. 775.089(3)(d), F.S.

Time period to make restitution when probation ordered. Section 948.032, F.S., provides that when a defendant is placed on probation, any restitution order shall be a condition of the probation. Section 948.06 (5), F.S., provides that where a probationer has made a good-faith effort to pay restitution, but is unable to do so, the court must first consider alternate measures of punishment other than imprisonment. In *Hewett v. State*, 613 So.2d 1305 (Fla. 1993), the Court held that extending a defendant's probation was not an alternate measure authorized by s. 948.06(5), F.S.

In *Hewett, supra*, Justice Grime, in a concurring opinion, stated:

If the statute authorized it, I would see no objection to extending the time within which the defendant could make restitution beyond the probationary period. Then, if there was a failure to pay the restitution despite the ability to do so, the defendant could be held in contempt.

613 So.2d 1305, 1307.

Under s. 948.15, F.S., probation may be ordered for up to one year for a misdemeanor offense in which the use of alcohol is a significant factor. On a misdemeanor DUI offense in which probation has been imposed for one year, which is expressly provided for in s. 316.193, F.S., the court has jurisdiction over the restitution order for only one year.

Last session, the Legislature amended s. 775.089(3), F.S., to extend the jurisdiction a court has to enforce orders of restitution in misdemeanor cases for a period not to exceed five years. (Chapter 99-358, Laws of Florida). This new provision is as follows:

(c) Notwithstanding this subsection, a court that has ordered restitution for a misdemeanor offense shall retain jurisdiction for the purpose of enforcing the restitution order for any period, not to exceed 5 years, that is pronounced by the court at the time restitution is ordered. s. 775.089(3)(c), F.S.

Civil judgment authorized if restitution not made within specified period. If restitution is not made within the specified time period, “the court may continue the restitution order through the duration of the civil judgment provision” contained in subsection (5) of s. 775.089, F.S., and as provided in s. 55.10, F.S. See *Sims v. State*, 637 So.2d 21, 23 (Fla. 4th DCA. 1994).

Subsection (5) of s. 775.089, F.S., provides that the state or a victim may enforce a restitution order in the same manner as a judgment in a civil action. Subsection (5), states that any outstanding unpaid amount will bear interest in accordance with s. 55.03, F.S., and when properly

recorded, becomes a lien on the defendant's real estate. Finally, subsection (5), makes defendants liable for costs and attorney's fees incurred by the victim in enforcing the order.

III. Effect of Proposed Changes:

The CS would expressly provide in the DUI statute that the period of probation allowed in misdemeanor DUI cases could be extended from one year to five years for the purpose of completing payment of restitution. The additional period of probation could apply whether or not incarceration was included as a condition of probation. (The period of incarceration would be unaffected by the CS.) If, however, the defendant satisfied all financial obligations (restitution, court costs, and fines) within the first year of probation and otherwise complied with the terms of probation, the probationary period would be terminated.

Committee Substitute for Senate Bill 196 would also amend s. 948.15, F.S., to conform it with the changes made to s. 316.193, F.S. Finally, the CS would provide that a previous conviction for purposes of violating s. 316.193, F.S., would include alcohol or drug related boating offenses.

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:

To the extent that this CS will serve to increase restitution payments to crime victims, they will experience a positive fiscal impact.

C. Government Sector Impact:

The fiscal impact of this CS is indeterminate. There will be increased costs associated with the extended period of probation supervision, and a foreseeable increase in violation of probation hearings relating to nonpayment of court costs and restitution. On the other hand,

it is also anticipated that the increase in consequences for failure to make the prescribed payments will result in an increase in restitution amounts collected by victims of DUI offenders, as well as increase the collection of court costs.

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.
