

# 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.)

---

Prepared By: Transportation Committee

---

BILL: SB 1642

SPONSOR: Senators Smith and Lynn

SUBJECT: Driving or Boating Under the Influence

DATE: April 20, 2005

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

---

## I. Summary:

Senate Bill 1642 lowers the blood and breath alcohol level (BAL) for purposes of triggering driving under the influence (DUI) and boating under the influence (BUI) enhanced penalties from 0.20 or more to 0.16 or more. (Currently, the unlawful BAL is 0.08 or more and the BAL for enhanced penalties is 0.20 or more.) This change makes the enhanced penalties apply when the BAL is twice the legal limit of DUI or BUI (0.16 is twice the legal limit of 0.08). (Enhanced penalties currently apply when a person is convicted of DUI or BUI with a BAL of 0.20 or more, or when a person is DUI or BUI and is accompanied by a passenger under the age of 18 years).

This bill substantially amends sections 316.193, 316.656, and 327.35, and reenacts the following sections of the Florida Statutes: 142.01, 316.066, 316.072, 316.1932, 316.1933, 316.1934, 316.1937, 316.1939, 318.143, 318.17, 322.03, 322.0602, 322.21, 322.25, 322.26, 322.2615, 322.2616, 322.264, 322.271, 322.28, 322.282, 322.291, 322.34, 322.44, 322.62, 322.63, 322.64, 323.001, 327.35, 397.405, 440.02, 440.09, 493.6106, 627.758, 790.06, 903.36, 907.041, 938.07, 938.21, 938.23, 943.05, 948.03, 948.036, 960.03, 327.352, 327.35215, 327.353, 327.354, 327.355, 327.359, 327.36, and 938.07.

## II. Present Situation:

Section 316.193, F.S., proscribes driving under the influence of alcohol or drugs to the extent normal faculties are impaired or driving with a blood alcohol level of 0.08 or more grams of alcohol per 100 millimeters of blood or with a breath alcohol level of 0.08 or more grams of alcohol per 210 liters of breath (DUI). Similarly, s. 327.35, F.S., proscribes boating under the influence of alcohol or drugs to the extent normal faculties are impaired or operating a vessel with an unlawful blood or breath alcohol level of 0.08 or more (BUI). Penalties for DUI and BUI

vary according to the frequency of previous convictions, the offender's blood alcohol level (BAL) when arrested, and whether serious injury or death results.

Generally, modified misdemeanor penalties apply when there is no property damage or personal injury and when there are fewer than three DUI or BUI 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. He must also be on probation for up to 1 year and participate in 50 hours of community service.

*However, if the first-time offender's BAL is 0.20 or more, or if a passenger under 18 years of age is present in the vehicle or vessel while the driver is DUI or BUI, the penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months in jail.*

A second DUI or BUI conviction carries a fine ranging from \$500 to \$1,000 and imprisonment for a period of up to 9 months. However, if that offense occurs within 5 years of a previous DUI or BUI conviction, there is a mandatory imprisonment period of at least 10 days. At least 48 hours of this confinement must be consecutive.

*Enhanced penalties also apply when the second-time offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle or vessel while the driver is DUI or BUI. These penalties require a fine ranging from \$1,000 to \$2,000, and imprisonment not exceeding 12 months.*

A third or subsequent DUI or BUI conviction occurring more than 10 years after a prior conviction carries a fine ranging from \$1,000 to \$2,500 and possible imprisonment of up to 12 months. However, if that offense occurs within 10 years of a previous DUI or BUI conviction, it is a third degree felony, punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years. There is also a 30-day minimum mandatory imprisonment period. At least 48 hours of this confinement must be consecutive.

*Enhanced penalties also apply when a third-time (or subsequent) offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle or vessel while the driver is DUI or BUI. These penalties require a fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months.*

A fourth or subsequent DUI or BUI conviction is a third degree felony penalty, which is punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years.

Pursuant to s. 316.193(2), F.S., the penalties for DUI and for DUI with a blood alcohol level of 0.20 or higher, or when the driver was accompanied in the vehicle with a person under the age of 18 are summarized in the chart as follows:

**Penalties for DUI based on Convictions**

	<b>Maximum Incarceration</b>	<b>Incarceration if 0.20 BAL or w/Minor</b>	<b>Fine</b>	<b>Fine if 0.20 BAL or w/Minor</b>
<b>1st Offense</b>	6 months jail	9 months jail	\$250-\$500	\$500-\$1,000
<b>2nd Offense</b>	9 months jail	12 months jail	\$500-\$1,000	\$1,000-\$2,000
<b>3rd Offense more than 10 years after prior offense</b>	12 months jail	12 months jail	\$1,000-\$2,500	\$2,000-\$5,000
<b>3rd Offense within 10 yrs. of prior conviction, or 4th Offense (3rd-Degree felony)</b>	5 years prison	5 years prison	\$1,000-\$5,000	\$1,000-\$5,000

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

In addition to these penalties, the bill also addresses s. 316.656, F.S., which provides no trial judge may accept a plea of guilty to a lesser offense from a person charged with DUI who has a BAL level of 0.20 or more.

Initially, when the Legislature provided enhanced DUI and BUI penalty provisions for persons with a BAL of 0.20 or more, the unlawful BAL for purposes of charging DUI or BUI was 0.10 or more, not 0.08 or more. The enhanced penalties were triggered when the BAL reached twice the legal limit (0.20 or more). When the Legislature later lowered the unlawful BAL to 0.08 or more, it did not also lower the BAL that triggered enhanced penalties from 0.20 to 0.16.

**III. Effect of Proposed Changes:**

Senate Bill 1642 would lower the BAL for purposes of triggering DUI and BUI enhanced penalties from 0.20 or more to 0.16 or more. (Currently, the unlawful blood and breath alcohol level is 0.08 or more and the BAL for enhanced penalties is 0.20 or more.) This change would make the enhanced penalties apply when the BAL is twice the legal limit of DUI or BUI (0.16 is twice the legal limit of 0.08). (Enhanced penalties currently apply when a person is convicted of DUI or BUI with a BAL of 0.20 or more, or when a person is DUI or BUI and such person is accompanied by a passenger under the age of 18 years).

In addition, this bill makes corresponding changes to s. 316.656, F.S., which is amended to provide a trial judge may not accept a plea of guilty to a lesser offense from a person convicted of DUI who had a BAL level of 0.16 or higher.

The bill would also reenact numerous sections that reference the statutes being amended for purposes of incorporating these changes into those sections of law.

**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:

Under SB 1642, persons convicted of DUI or BUI with a BAL of 0.16 or more will be subject to the enhanced penalties that currently only apply when the BAL is 0.20 or more.

## C. Government Sector Impact:

Because the number of persons convicted of DUI or BUI with a BAL between 0.16 and 0.20 cannot be ascertained, any positive impact on state and local revenues because of increased fines is indeterminate.

Senate Bill 1642 could impose an additional burden (indeterminate) on local jails if more offenders are sentenced to enhanced incarceration penalties of up to 12 months. The court system may also be impacted to the extent that a lower threshold for enhanced penalties may provide a greater incentive for an offender to use the courts to avoid such penalties.

The Criminal Justice Estimating Conference has determined there is no prison bed impact under this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

---

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

---