

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 2108

INTRODUCER: Senator Crist

SUBJECT: DUI / Leaving Scene of Accident

DATE: March 28, 2006

REVISED: _____

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

I. Summary:

The bill requires the imposition of minimum mandatory sentences for the offense of leaving the scene of an accident involving injury or death where the offender was driving under the influence (DUI). For the offense of leaving the scene of an accident resulting in injury while DUI, the minimum mandatory sentence would be four years. For the offense of leaving the scene of an accident resulting in death while DUI, the minimum mandatory sentence would be eight years. The bill also requires a judge order an offender to make restitution to the victim upon conviction for the offenses of leaving the scene of an accident involving injury or death. The bill provides for the imposition of "victim injury points" for these offenses. This will have the effect of significantly increasing the lowest permissible sentence a judge can impose for the offense of leaving the scene of an accident involving injury or death.

This bill substantially amends sections 316.027 and 921.0021 of the Florida Statutes.

II. Present Situation:

Leaving the Scene of an Accident Involving Injury or Death.

Section 316.027(1), F.S., provides a driver of a vehicle involved (causation not required) in a crash resulting in the injury or death of any person must immediately stop the vehicle at or near the scene of the crash, and must remain at the scene until he or she has complied with the requirements of s. 316.062, F.S.

A willful violation of this provision is a third degree felony where injury occurs and is commonly known as leaving the scene of an accident involving injury. A willful violation of this provision where death occurs is commonly known as leaving the scene of an accident involving death, and is a second degree felony. The offense of leaving the scene of an accident involving

death is a Level 7 felony. The sentence for this offense for a first time offender ranges from 21 months to 15 years in prison.

Section 316.062, F.S., requires the driver of a vehicle involved in a crash resulting in property damage, injury, or death, to provide his or her name, address, vehicle registration number and present his or her driver's license, to any person injured or whose property was damaged or to law enforcement investigating the crash. The driver also must render reasonable assistance to the injured person. A violation of this provision is considered a nonmoving violation punishable by a thirty dollar fine. See s. 318.18(2), F.S.

Restitution.

A judge is required to order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode unless the judge finds clear and compelling reasons not to order such restitution.

Generally, restitution cannot be ordered against a person convicted of the offense of leaving the scene of an accident involving injury or death, primarily because the offense of leaving the scene does not contain an element which establishes a causal connection between the injury or death and the act of leaving the scene of a crash a person was simply involved in (but did not necessarily cause).

In *Schuetz v. State*, 822 So.2d 1275 (Fla 2002), the defendant was charged with and convicted of driving with a suspended license and leaving the scene of an accident involving an injury. The Supreme Court of Florida held:

“[T]he mere occurrence of an accident, while the defendant is engaged in the criminal offense of driving with a suspended license does not as a matter of law mandate the award of restitution for the damages arising out of the accident. An award of restitution requires the existence of a causal relationship between the criminal offense of driving with a suspended license and the accident that resulted in the damaged or loss.”

In the opinion, the Supreme Court relied on *State v. Williams*, 520 So.2d 276 (Fla. 1988), an earlier opinion which struck an award of restitution for the offense of leaving the scene of an accident and noted the lower court's assertion it “is undisputed that restitution could not be ordered [based on] the conviction for leaving the scene of an accident.” *Id.* at 1277. See also, *Longshore v. State*, 655 So.2d 1139 (Fla. 5th DCA 1995); *Triplett v. State*, 709 So.2d 107 (Fla. 5th DCA 1998)(court certified question of whether court may impose restitution for damages which are related to, but not caused by, the offense for which the defendant pleads guilty; review was denied by Florida Supreme Court, see *State v. Triplett*, 725 So.2d 1110 (Fla. Sep 25, 1998).

Driving Under the Influence.

The offense of driving under the influence is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath¹.

A person who is in violation of the above provision, who operates a vehicle and who by reason of such operation, causes or contributes to causing the death of any human being commits DUI manslaughter.² The offense is a second degree felony.³ The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid as required by s. 316.062, F.S., described above.⁴

The offense of DUI manslaughter (where the offender did not leave the scene) is ranked in level 8 of the offense severity ranking chart.⁵ A key factor in calculating the lowest permissible sentence for this offense is the large number of victim injury points that must be scored for the death of the victim. This results in a lowest permissible sentence for a first time offender of 124.5 months (10 years and 4.5 months) in prison. The maximum sentence, based on the fact the offense is a second degree felony, is 15 years in prison.

Victim Injury.

For sentencing purposes, victim injury is defined to mean the "physical injury or death suffered by a person as a direct result" of the criminal offense. Generally, victim injury points are not assessed for the offense of leaving the scene of an accident involving injury or death because the injury or death is not a direct result of the offender leaving the scene.

There are only two reported decisions affirming an assessment of victim injury points for leaving the scene of an accident involving death. In both cases, there was evidence that the victim was dragged after being hit.

In *May v. State*, 747 So.2d 459 (Fla. 4th DCA 1999), the offender dragged the victim for 500 feet and there was evidence the dragging was a direct cause of death. In *Sims v. State*, 869 So.2d 45, 48 (Fla. 5th DCA 2004), the court concluded because there was evidence the victim was dragged after being hit by the offender's vehicle, "there was sufficient causal connection between the leaving of the accident scene and the death to justify the imposition of victim injury points."

Criminal Punishment Code.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the

¹ See s. 316.193, F.S.

² See s. 316.193, F.S.

³ See s. 316.193, F.S.

⁴ See s. 316.193, F.S.

⁵ See s. 921.0022, F.S.

offense as determined by the Legislature.⁶ If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.

A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.

A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings there are "circumstances or factors that reasonably justify the downward departure." The permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years.

III. Effect of Proposed Changes:

Section 1 provides the act may be cited as the "Adam Arnold Act."

Section 2 amends s. 316.027, F.S., to require a minimum mandatory prison sentence of four years for persons committing the offense of leaving the scene of an accident involving injury, while DUI. The bill requires a minimum mandatory prison sentence of eight years for persons committing the offense of leaving the scene of an accident involving death, while DUI.

SB 2108 requires the court to order drivers committing the offense of leaving the scene of an accident involving injury or death, to make restitution to the victim for any damage or loss unless the court finds clear and convincing reasons not to order the restitution. Consistent with s. 775.089(1)(a), F.S., the restitution statute, the bill provides:

- Restitution may be monetary or non-monetary
- The court must make the payment of restitution a condition of probation in accordance with s.948.03, F.S.
- The court requirement to make restitution to a victim does not remove or diminish the requirement the court order payment to the Crime Compensation Trust Fund pursuant to ch. 960, F.S.
- Payment of an award by this trust fund creates an order of restitution.

Section 921.0021, F.S., is amended to authorize the assessment of victim injury points when a person is convicted of leaving the scene of an accident involving death or injury. In cases where the judge assessed victim injury points, this would have the effect of significantly increasing the lowest permissible sentence for the offense. The offense of leaving the scene of an accident involving injuries is ranked in Level 5 of the ranking chart.⁷ The sentence for this offense for a first time offender ranges from any non-state prison sanction to five years in prison. The addition of victim injury points would change the lowest permissible sentence, depending on the severity

⁶ See s. 921.0022, F.S.

⁷ See s. 921.0022, F.S.

of the injury. If the victim injury was severe, the lowest permissible sentence would increase to 30 months in prison; if the injury was moderate, the lowest permissible sentence would be increased to 13.5 months in prison and if the victim injury was slight, the lowest permissible sentence would remain any non-state prison sanction. The maximum sentence for the offense would still be five years in prison. The offense of leaving the scene of an accident involving death is a Level 7 felony. The sentence for this offense for a first time offender ranges from 21 months to 15 years in prison. The addition of victim injury points for the death of the victim would greatly increase the lowest permissible sentence for the offense to 111 months (9 years and 3 months) in prison.

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:

This bill will require a defendant who commits the offense of leaving the scene of an accident involving injury or death to pay restitution for the victim's injuries unless the court finds a clear and convincing reason not to order the restitution. Presumably lack of causation would constitute such a reason.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet determined the prison bed impact of this bill on the Department of Corrections. However, the conference has analyzed the impact of a similar companion bill, House Bill 1169, to be indeterminate - minimal. Note HB 1169 requires a 2 year minimum mandatory sentence for the offense of leaving the scene of an accident involving death. SB 2108 requires minimum mandatory sentences of 4 or 8 years, so a more significant impact is likely. Further, both bills provide for the addition of victim injury points and are expected to result in an increase in the number of offenders receiving a prison sentence, and the length of the prison sentences. However, because victim injury points are not generally assessed for the offense of leaving the scene of an accident involving injury, it is difficult to predict what percentage of the

victim injury points assessed for this offense in the future will be slight, moderate or severe.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are likely to be issues with regard to proving the offense of leaving the scene of an accident while driving under the influence. If the driver has left the scene and is, therefore, either no longer behind the wheel of the vehicle at the time of law enforcement involvement, or has had an opportunity to consume alcohol *after* the accident occurred, elements that must be proven will be difficult, if not nearly impossible, to prove.

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

VIII. Summary of Amendments:

None.

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