

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/HB 183	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Appropriations; Transportation; Diaz de la Portilla and others	118 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 102; HB 55	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/HB 183 passed the House on April 22, 2014, as CS/CS/SB 102. The bill creates the "Aaron Cohen Life Protection Act," to create and increase penalties for leaving the scene of an accident. Current law requires the driver of any vehicle involved in a crash that results in injury or death to immediately stop the vehicle, remain at the scene until the driver provides specified information, and render aid to the injured person. A violation is:

- A third degree felony, ranked in Level 5 of the ranking chart, if the crash results in injury;
- A first degree felony, ranked in Level 7 of the ranking chart, when the crash results in death; and
- A first degree felony, ranked in Level 7 of the ranking chart and punishable by a 2-year mandatory minimum term of imprisonment, when the crash results in death and the person was driving under the influence.

Specifically, the bill:

- Creates a third "leaving the scene of an accident offense" that makes it a second degree felony, ranked in Level 6 of the ranking chart, for a person to leave the scene of an accident involving serious bodily injury;
- Ranks leaving the scene of an accident involving injury, serious bodily injury, and death one level higher in the ranking chart if the victim of the offense is a "vulnerable road user;"
- Creates a new 4-year mandatory minimum term of imprisonment applicable to persons who leave the scene of an accident involving death;
- Increases the mandatory minimum term of imprisonment applicable to persons who are driving under the influence and who leave the scene of an accident involving death from 2 to 4 years;
- Allows a defendant to move to depart from the four-year mandatory minimum sentence for leaving the scene of an accident involving death, unless the defendant was driving under the influence at the time of the violation;
- Requires a driver who leaves the scene of a crash involving injury, serious bodily injury, or death to:
 - Have his or her driver license revoked for at least three years; and
 - Complete a victim's impact panel session, if one exists, or a driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway; and
- Requires the Department of Highway Safety and Motor Vehicles (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.

The Criminal Justice Impact Conference met on January 30, 2014 and found that CS/SB 102, which is similar to this bill, will have an indeterminate impact on prison beds. The bill may also have an indeterminate negative fiscal impact on DHSMV. See Fiscal Impact on State Government.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Aaron Cohen

On February 15, 2012, at approximately 5:40 A.M., Aaron Cohen and Enda Walsh were cycling in the bike lane eastbound across the Rickenbacker Causeway in Miami-Dade County when they were both struck from behind by a 2010 Honda Civic. According to an independent witness, the vehicle fled the scene. Aaron Cohen expired on February 16, 2012 at approximately 1 P.M., from injuries sustained in the crash.¹

According to reports, the driver turned himself in 17 hours later and admitted to being the driver of the vehicle at the time of the crash.² Police found evidence that the driver, who was on probation for cocaine charges,³ had been drinking, but they could not test him because of the amount of time that had elapsed since the accident.⁴ On February 1, 2013, the driver was sentenced to 364 days in jail⁵ and released to two years of probation after serving 264 days.⁶

Section 316.027, F.S. - Leaving the Scene of an Accident

Section 316.027, F.S., requires that the driver of any vehicle involved in a crash that results in death or injury of any person must immediately stop the vehicle and remain at the scene until the driver has complied with section 316.062, F.S. That statute 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 Information received from the Department of Highway Safety and Motor Vehicles, Florida Long Form Traffic Crash Report number 83005647, on file with the Transportation and Highway Safety Subcommittee.

² See additional information on the Aaron Cohen incident from the Miami Herald news article, at <http://www.miamiherald.com/2014/02/04/3913086/attorney-general-pam-bondi-legislators.html>. (Last viewed 2/5/14).

³ According to the Florida Department of Corrections Offender Network, the driver's criminal history record lists a cocaine-possession charge offense date of 05/13/2011. On file with the Transportation and Highway Safety Subcommittee.

⁴ According to the American Prosecutors Research Institute (APRI), a non-profit research, training and technical assistance affiliate of the National District Attorneys Association, APRI Special Topics Series (2003), alcohol is eliminated from the body at an average rate of about one standard drink per hour. However, there are other factors that affect intoxication (food consumption, gender, medications, illness). Retrograde extrapolation is the process of estimating an alcohol concentration at an earlier time from a measurement taken at a later time; however, a delay between the time of the crash and the test can hinder an accurate determination. On file with the Transportation and Highway Safety Subcommittee.

⁵ Miami-Dade Clerk of the Courts Criminal Sentence Document, Docket Image Book/Page: 028479/03416, case number F12-003845, *The State Of Florida VS. Michele Traverso*, on file with the Transportation and Highway Safety Subcommittee. Miami-Dade court documents can be viewed at <https://www2.miami-dadeclerk.com/CJIS/CaseSearch.aspx>.

⁶ According to the Florida Department of Corrections Offender Network, at <http://www.dc.state.fl.us/InmateInfo/InmateInfoMenu.asp> the driver's criminal history record provides a sentence date of 01/16/2013 for the offense of leaving the scene of a crash with death, a supervision (probation) begin date of 10/06/13, and a scheduled termination date of 10/08/15. On file with the Transportation and Highway Safety Subcommittee.

- 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.

All violations of section 316.027, F.S., require that the driver violating the statute make restitution to the victim unless the court finds clear and compelling reasons not to order restitution. Restitution is required to be made a condition of probation.⁷ DHSMV is required to revoke the driver license of a person who violates section 316.027, F.S.⁸

Injury

A driver who leaves the scene of a crash involving injury, commits a third degree felony.⁹ A third degree felony is punishable by up to five years in prison and a fine of up to \$5,000.¹⁰ The violation does not include a mandatory minimum prison sentence. Proof that the driver caused or contributed to causing injury to a person is not required for a conviction.¹¹

Death

A driver who leaves the scene of a crash involving death, commits a first degree felony.¹² A first degree felony is punishable by up to 30 years in prison and a fine of up to \$10,000.¹³ If the person was driving under the influence, the court must sentence the person to a minimum mandatory prison sentence of two years.¹⁴ 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.

According to Florida Uniform Traffic Citation Statistics, there were 15,642 leaving the scene of an accident violations during calendar year 2012.¹⁵

Minimum Mandatory Prison Sentences

Currently, there are discrepancies in the mandatory minimum penalties that apply to crashes involving death. For example, a driver convicted of DUI manslaughter is required to serve a mandatory minimum prison sentence of four years.¹⁶ In contrast, a person driving under the influence who leaves the scene of a crash involving death is only required to receive a minimum prison sentence of two years.

Additionally, the current penalties for leaving the scene of an accident involving death and leaving the scene of an accident involving death while driving under the influence may have unintended consequences. The former is a first degree misdemeanor, while the latter is a first degree misdemeanor punishable by a two-year mandatory minimum sentence. This could incentivize drivers who are under the influence and involved in an accident resulting in death to leave the scene (i.e., law enforcement will be less likely to determine the driver was drunk).

Driver Improvement Courses

Section 322.0261(2), F.S., provides that in addition to any other applicable penalties, DHSMV must require operators convicted of, or who have plead nolo contendere to, the following traffic offenses to

⁷ s. 316.027(1)(c), F.S.

⁸ s. 316.027(2), F.S.

⁹ s. 316.027(1)(a), F.S.

¹⁰ ss. 775.082, 775.083, and 775.084, F.S.

¹¹ 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).

¹² s. 316.027(1)(b), F.S.

¹³ ss. 775.082, 775.083, and 775.084, F.S.

¹⁴ s. 316.027(1)(b), F.S.

¹⁵ See the Department of Highway Safety and Motor Vehicles website, Statistics, Studies, and Publications at <http://www.flhsmv.gov/html/safety.html>, (Last viewed 2/6/14).

¹⁶ s. 316.193(3), F.S., flush left.

attend a department-approved driver improvement course in order to maintain his or her driving privileges:

- A crash involving death or bodily injury requiring transport to a medical facility;¹⁷ or
- A second crash by the same operator within the previous two-year period involving property damage in an apparent amount of at least \$500.¹⁸

If the operator fails to complete the course within ninety days after receiving notice from DHSMV, then DHSMV is required to cancel the operator's driver's license until the course is successfully completed. Currently, the course curriculum does not address the rights of vulnerable road users.

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, limits the authority of DHSMV to suspend or revoke a driver's license to one year. Consequently, the revocation period for violations of leaving the scene of a crash resulting in injury or death (in the absence of DUI), is one year.

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 involving serious bodily injury, vehicular manslaughter, or vehicular homicide. Section 322.28(2)(d), F.S., requires the court to permanently revoke the driver license or driving privilege of any person who has been 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, revocation of the driver license is permanent.¹⁹ A person driving DUI may view an attempt to leave the scene as advantageous because, if successful, a DUI charge is avoided. The period of license revocation in such event would be not less than one year nor more than five,²⁰ as opposed to permanent.

Criminal Punishment Code, Offense Severity Ranking Chart

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998.²¹ 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 offense as determined by the Legislature.²² If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.²³ 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 that the defendant committed at the time of the primary offense, the defendant's prior record, and other aggravating factors.²⁴ The points are added in order to determine the "lowest permissible sentence" for the offense.²⁵

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.²⁶

¹⁷ s. 322.0261(1)(a), F.S.

¹⁸ s. 322.0261(1)(b), F.S.

¹⁹ s. 322.28(2)(d), F.S.

²⁰ 316.1935(5), F.S.

²¹ s. 921.002, F.S.

²² ss 921.0022 and 921.0024, F.S.

²³ s. 921.0023, F.S.

²⁴ s. 921.0024, F.S.

²⁵ *Id.*

²⁶ Rule 3.704(d)(26) ("The Criminal Punishment Code"), Florida Rules of Criminal Procedure.

Currently, leaving the scene of a crash involving injury is a third degree felony ranked in Level 5 of the offense severity ranking chart.²⁷ Leaving the scene of a crash involving death is a first degree felony ranked in Level 7 of the offense severity ranking chart.²⁸

Proposed Changes

The bill creates the “Aaron Cohen Life Protection Act,” to create and increase penalties for leaving the scene of an accident.

As noted above, s. 316.027, F.S., makes it a third degree felony, ranked in Level 5 of the offense severity ranking chart, for a person to leave the scene of an accident involving injury. It is a first degree felony, ranking in Level 7, for a person to leave the scene of an accident involving death. The bill creates a middle category by making it a second degree felony,²⁹ ranked in Level 6, for a person to leave the scene of an accident involving serious bodily injury. The bill defines “serious bodily injury” as 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.³⁰

The bill ranks each of the above-described offenses one level higher in the offense severity ranking chart if the victim of the offense is a “vulnerable road user.” This term is defined as 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;
- Person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- Person riding an animal; or
- Person lawfully operating the following on a public right-of-way, crosswalk, or shoulder of the roadway:
 - Farm tractor or similar vehicle designed primarily for farm use;
 - Skateboard, roller skates, in-line skates;
 - Horse-drawn carriage;
 - Electric personal assistive mobility device; or
 - Wheelchair.

This will have the effect of increasing the offender’s lowest permissible sentence.

The bill also creates a new 4-year mandatory minimum term of imprisonment applicable to persons who leave the scene of an accident involving death. The bill also increases the mandatory minimum term of imprisonment applicable to persons who are driving under the influence and who leave the scene of an accident involving death from 2 to 4 years.

The bill allows a defendant to move to depart from the four-year mandatory minimum sentence for leaving the scene of an accident involving death, unless the defendant was driving under the influence at the time of the violation. The bill allows the state attorney to object to the motion, and prohibits the court from granting the motion unless it finds that a factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term would constitute or result in an injustice. The court must state the basis for granting a departure in open court.

The bill requires a driver in violation of leaving the scene of a crash involving injury, serious bodily injury, or death to:

²⁷ s. 921.0022(3)(e), F.S.

²⁸ s. 921.0022(3)(g), F.S.

²⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³⁰ The definition is the same as used in the driving under the influence statute. See s. 316.1933(1)(b), F.S.

- Have his or her driver license revoked for at least three years as provided in s. 322.28(4), F.S., and
- Complete a victim's impact panel session, if one exists, or a driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway.

DHSMV may reinstate an offender's driving privilege after verifying that the above-described criteria have been satisfied.

The bill amends s. 322.0261(2), F.S., to require 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.

The bill 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 involving injury, serious bodily injury, or death, for a minimum of three years. In the event the period of revocation was not specified by the court at the time of imposing sentence or within thirty days thereafter, DHSMV is required to revoke the driver license for the same period for a conviction of leaving the scene of a crash involving serious bodily injury.

The bill 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., and makes a technical change.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DHSMV expects the bill to require approximately 80 non-recurring programming hours to include in the driver improvement course curriculum instruction specifically addressing the rights of vulnerable road users relative to vehicles on the highway, the cost of which will be absorbed within existing resources.³¹

The Criminal Justice Impact Conference met on January 30, 2014 and found that CS/SB 102, which is similar to this bill, will have an indeterminate impact on prison beds.

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.

The EDR states 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.

³¹ See the DHSMV 2014 Agency Legislative Bill Analysis for CS/HB 183, pgs 4 & 5. This document is on file with the Transportation and Highway Safety Subcommittee.

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.