

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.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 456

INTRODUCER: Transportation Committee and Senator Wise

SUBJECT: Ignition Interlock Device/DUI

DATE: April 10, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.	Dugger	Cannon	CJ	Favorable
3.			TA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/>	Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/>	Technical amendments were recommended
	<input type="checkbox"/>	Amendments were recommended
	<input type="checkbox"/>	Significant amendments were recommended

I. Summary:

Current law requires a court to order the mandatory placement of an ignition interlock device upon all vehicles leased or owned by a person convicted of a second or third violation of driving under the influence. A device is also mandated for first-time offenders when the person's blood-alcohol level was .20 percent or higher or the person was accompanied by a minor when the violation occurred.

Senate Bill 456 amends s. 316.193, F.S., to direct the court to order the mandatory placement of an ignition interlock device for at least 6 months on all vehicles leased or owned by a person convicted of a first time violation of driving under the influence if the person had a blood or breath alcohol level of 0.15 percent or higher but less than 0.20 percent at the time of the DUI offense. A 2nd conviction requires an ignition interlock device for a period of up to 1 year.

The bill also increases the amount of time an interlock device must be used by a first-time offender who is guilty of driving under the influence with a blood alcohol level of 0.20 percent or higher or who had a minor in the vehicle at the time of arrest from "up to six months" to "up to 1 year."

The bill authorizes the department to order the ignition interlock device be installed if the court fails or neglects to do so. Lastly, the bill requires an offender who is required to have an ignition interlock to pay a \$15 service fee which is to be deposited into the DUI Programs Coordination Trust Fund.

This bill substantially amends ss. 316.193, 322.21, and 322.2715 of the Florida Statutes.

//. Present Situation:

Generally, for a first conviction of driving under the influence, an ignition interlock device (IID) is not statutorily required; however, a court may order IID placement at the judge's discretion. Statutes require an IID be installed on the vehicles of persons convicted of a second or third offense of driving under the influence, and for first offenders if a minor was in the vehicle at the time of the offense, or the violator's blood alcohol level (BAL) was over 0.20 percent.

Driving Under the Influence (DUI)

The offense of DUI¹ 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 the person's normal faculties are impaired;
- The person has a BAL of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a BAL of 0.08 or more grams of alcohol per 210 liters of breath.

The DUI offense is punishable as follows:²

- For a first conviction, by a fine of not less than \$250 or more than \$500 and by imprisonment for not more than 6 months.
- For a second conviction, by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.³
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than \$1000 or more than \$2500 and by imprisonment for not more than 12 months.⁴

A third conviction for an offense occurring within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail⁵ and up to five years in prison and a fine of up to \$1000.⁶ A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than \$1000 or more than \$5000.⁷ If the fourth

¹s. 316.193(1), F.S.

²s. 316.193(2), F.S.

³s. 316.193(6)(b), F.S.

⁴s. 316.193(2)(b)2, F.S.

⁵s. 316.193(6)(c), F.S.

⁶s. 316.193(2)(b)1, F.S.

⁷s. 316.193(2)(b)3., F.S.

or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.⁸

At the judge's discretion, a defendant may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced in a residential alcoholism treatment program or a residential drug abuse treatment program.⁹ Current law also requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles for various periods of time based on the number of DUI convictions.

This section requires the revocation of a driver's license:

- for not less than 180 days and no more than 1 year for a first DUI conviction;¹⁰
- for not less than 5 years for a second conviction for an offense that occurs within 5 years after the date of a prior conviction;¹¹ and
- for not less than 10 years for a third conviction for an offense that occurs within 10 years of a prior conviction.¹²

A fourth DUI conviction results in permanent revocation of a person's driving privilege.¹³

Ignition Interlock Devices (IID)

As defined in Rule 15A-9.003, F.A.C., an IID is a "breath alcohol analyzer connected to a motor vehicle's ignition. In order to start the motor vehicle engine, a convicted person must blow a deep lung breath sample into the analyzer, which measures the breath alcohol concentration. If the breath alcohol concentration exceeds the fail point on the IID, the motor vehicle engine will not start." An IID currently disables a vehicle if the driver's BAL is 0.05 percent or higher or as otherwise specified by the court.

Section 316.193, F.S., requires an IID to be installed on the vehicles of certain persons convicted of DUI when they qualify for a permanent or restricted driver's license. Upon a first DUI conviction, no IID is required unless the person had a BAL of 0.20 percent or higher, or was accompanied by a minor at the time of the infraction. If these conditions are met, the court is mandated to require the placement of an IID for up to six months. Upon a second DUI conviction, the law requires the placement of an IID on all vehicles owned or leased by the offender for at least one year regardless of the violator's BAL or whether a minor was present in the vehicle. Upon a third DUI conviction, the court must order an IID to be installed for at least 2 years. The IID must be of a type approved by the Department of Highway Safety and Motor Vehicles (department) and must be placed and maintained at the offender's sole expense. Additionally, the offender is not permitted to drive any motor vehicle that does not have a functioning interlock device.

⁸s. 316.193(6)(c), F.S.

⁹s. 316.193(6)(k), F.S.

¹⁰s. 322.28(2)(a)1., F.S.

¹¹s. 322.28(2)(a)2., F.S.

¹²s. 322.28(2)(a)3., F.S.

¹³s. 322.28(2)(e), F.S.

Additionally, s. 316.1937, F.S., provides a judge the option of requiring an IID for first-time offenders. The court *may* prohibit any person who is convicted of DUI in violation of s. 316.193, F.S., from operating a motor vehicle during the period of probation unless the vehicle is equipped with a functioning IID. However, the court *is required* to order the placement of an IID in those circumstances required by s. 316.193, F.S. Specifically, the court must order the placement of an interlock device for up to 6 months for a first DUI offense and for up to 2 years for a second DUI offense:

- Where the violator had a BAL of 0.20 percent or higher; or
- If a passenger under 18 years of age is present in the vehicle.

Violation of the conditions of s. 316.1937, F.S., will result in the revocation of the offender's driving privilege and imposition of a fine. If the court imposes the use of an IID, the court must: (1) stipulate on the record the requirement for, and the period of, the use of a certified IID; (2) order the records of the department reflect such requirement; (3) order an IID be installed, as the court may determine necessary, on any vehicle owned or operated by the convicted person; (4) determine the convicted person's ability to pay for installation of the device if the person claims inability to pay; and (5) require proof of installation of the device and periodic reporting to the department for verification of the operation of the device in the convicted person's vehicle. The law does provide indigency guidelines. If the court determines the convicted person is unable to pay for the installation of the IID, the court may order a portion of the fine paid by the person for a violation of s. 316.193, F.S., be allocated to defray the costs of installing the device. (See s. 316.1937(2)(d), F.S.) Section 316.1938, F.S., requires the department to certify the accuracy and precision of IIDs.

Pursuant to s. 316.193(2) and (4), F.S., the IID penalties for DUI and for DUI with a BAL of 0.20 percent 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:

Ignition Interlock Device Penalties for DUI based on Convictions

DUI Conviction	IID Requirement
1st Conviction	Optional – Up to 6 months if court ordered
1st Conviction if 0.20 BAL or w/Minor in Car	Required - Up to 6 months
2nd Conviction	Required - At least 1 year
2nd Conviction if 0.20 BAL or w/Minor in Car	Required - At least 2 years
3rd Conviction	Required - At least 2 years

Section 322.271(2)(d), F.S., provides the department, based upon review of the licensee's application for reinstatement, may require the use of an IID under s. 322.2715, F.S.

Section 322.2715, F.S., directs the department to require placement of an IID for any person convicted of committing an offense of DUI as shown in the chart above, prior to issuing the person a permanent or restricted driver's license.

The current IID program has been in place since February 1, 2004. Two IID vendors have been contracted by the department to install, inspect and service the ignition interlock devices in

Florida. "Interlock Systems of Florida" is the vendor for south Florida counties and has eight installation locations. "Interlock Group of Florida" is the vendor for north Florida counties and has eight installation locations. The ignition device is programmed to require routine servicing at 30 to 60 day intervals. However, events involving misuse or non-compliance with program conditions may cause the service date to advance automatically. Service requirements must be strictly complied with; otherwise the interlock device will not allow the vehicle to be started, even if no alcohol is detected. As of March 3, 2008, there were 5,405 people across the state currently enrolled in the ignition interlock device program. According to the department, since the program began on February 1, 2004, there have been 13,990 people successfully complete the program requirements. This population has a 4.7 percent overall recidivism rate, with 111 receiving a DUI during the program and 684 receiving a DUI after the program. Some 1,291 people have quit the program since February 1, 2004. This population has a 7.67 percent overall recidivism rate. When a person prematurely quits the ignition interlock device program, their license is cancelled indefinitely until they complete their interlock requirement.

III. Effect of Proposed Changes:

Section 1 provides this act may be cited as the "Grace Redgate Act."

Section 2 amends s. 316.193, F.S., to direct the court to order the mandatory placement of an ignition interlock device for at least 6 months on all vehicles leased or owned by a person convicted of a first time violation of driving under the influence if the person had a blood or breath alcohol level of 0.15 or higher but less than 0.20 at the time of the DUI offense. A 2nd conviction requires an ignition interlock device for a period of up to 1 year. The bill also increases the amount of time an interlock device must be used by a first-time offender who is guilty of driving under the influence with a blood alcohol level of 0.20 or higher or who had a minor in the vehicle at the time of arrest from "up to six months" to "up to 1 year."

The bill also deletes outdated language regarding the installation of the IIDs not occurring before July 1, 2003.

Section 3 amends s. 322.21, F.S., to require an offender who is required to have an IID to pay a \$15 service fee which is to be deposited into the DUI Programs Coordination Trust Fund.

Section 4 amends s. 322.2715, F.S., to authorize the department to order the ignition interlock device be installed if the court fails or neglects to do so.

Section 5 provides this act shall take effect October 1, 2008.

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:

Section 316.193, F.S., requires the cost of IID placement to be at the sole expense of the convicted person. The cost to install an IID is \$70, plus tax. The offender must also pay a \$100 refundable deposit or a \$5 monthly insurance charge, as well as a \$67.50 monthly fee for monitoring and calibration. However, if the court determines the convicted person is unable to pay for the installation of the device, the court may order a portion of the fine paid by the person for the DUI violation be allocated to defray the costs of installing the device.¹⁴

Increasing the population required to participate in the IID program will increase the volume of installations and monthly maintenance work performed by the state's two contracted vendors. According to the department's DUI Expert System, there were 150,738 drivers who had first convictions for DUI that resulted in a referral to treatment over the last 10 years (1998-2007). Based on this information, the department estimates approximately 15,000 drivers will be required to have an IID based upon the provision requiring IIDs for convictions of DUI with a BAL of 0.15 or higher but less than 0.20. In addition, approximately 6,000 drivers will commit a 2nd or 3rd offense. As a result, the department estimates an additional 21,000 devices will be necessary each year.

C. Government Sector Impact:

According to the department, the increased number of devices (21,000) multiplied by the \$15 service fee would generate \$315,000 annually for the DUI Programs Coordination Trust Fund. The department anticipates the Bureau of Driver Education and DUI Programs will need two additional FTEs to handle the workload increase. Year one costs for these positions, Operations and Management Consultant IIs, are estimated at \$127,354 and estimated recurring costs are \$118,578. While the possible revenue generated (\$315,000 annually) appears to be in excess of the ongoing costs (approximately \$125,000 annually), the department has suggested compliance with ignition interlock requirements is significantly less than 100 percent, and the amount of revenue actually collected will fall similarly short of the \$315,000 estimated impact for full compliance.

¹⁴ s.316.1937(2)(d), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Transportation on March 11, 2008:

- Directs the court to order the mandatory placement of an ignition interlock device for at least 6 months on all vehicles leased or owned by a person convicted of a first time violation of driving under the influence if the person had a blood or breath alcohol level of 0.15 percent or higher but less than 0.20 percent at the time of the DUI offense. A 2nd conviction requires an ignition interlock device for a period of up to 1 year. The bill also increases the amount of time an interlock device must be used by a first-time offender who is guilty of DUI with a blood alcohol level of 0.20 percent or higher or who had a minor in the vehicle at the time of arrest from “up to six months” to “up to 1 year.”
- Permits the department to order the ignition interlock device be installed if the court fails or neglects to do so.
- Requires an offender who is required to have an ignition interlock to pay a \$15 service fee which is to be deposited into the DUI Programs Coordination Trust Fund.

B. Amendments:

None.