

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 Committee on Transportation

BILL: CS/CS/SB 918

INTRODUCER: Transportation Committee, Criminal Justice Committee, and Senator Simmons

SUBJECT: Driving Under the Influence

DATE: April 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Fav/CS
2.	Jones	Miller	TR	Fav/CS
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 918 amends s. 316.193, F.S., to allow a defendant convicted for the first time of the second degree misdemeanor offense of driving under the influence to agree to the placement of an ignition interlock device if the defendant has not caused injury to, or the death of, a person or damage to property.

If the defendant agrees or the court orders placement of an ignition interlock device, then the court, upon proper showing that the person has received counseling, treatment, rehabilitation or is enrolled in a substance abuse course, may withhold adjudication if the defendant does not have a prior withholding of adjudication or adjudication of guilt for any other offense. If the defendant fails to comply with the terms of the ignition interlock device, then the court may order, among other penalties, an adjudication of guilt for the defendant.

The bill also:

- Specifies that a judge may order, *as a condition of probation*, the ignition interlock device for at least six continuous months;
- Defines the term “conviction” to mean a determination of guilt, by plea or trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered;
- Specifies discounts of the monthly leasing fee of the ignition interlock device in certain situations due to an inability of the defendant to pay; and

- Specifies that defendants who qualify for a reduced leasing fee are not required to pay the costs of installation or removal of the device.

The bill may have a fiscal impact on companies that provide the ignition interlock devices to defendants in Florida and a negative indeterminate fiscal impact on the Department of Highway Safety and Motor Vehicles. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2017.

II. Present Situation:

Florida's Driving Under the Influence Laws

A person is guilty of driving under the influence if a person drives or is in actual physical control of a vehicle and the person:

- Is under the influence of alcoholic beverages, any controlled substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., to the extent that the person's normal faculties are impaired;
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.¹

The criminal penalties for driving under the influence vary depending on numerous factors such as the number of prior convictions, the length of time between convictions, and the defendant's blood alcohol level.² The penalties for a first time driving under the influence offense are punishable by:

- A period of probation not exceeding one year;
- A fine of not less than \$500 or more than \$1,000;
- Imprisonment for not more than six months;
- A mandatory 50 hours of community service; and
- A mandatory ten-day vehicle impoundment.³

Section 316.656, F.S., prohibits a court from withholding adjudication of guilt for any violation of s. 316.193, F.S., the offense of driving under the influence.

In 2016, there were 44,643 arrests for driving under the influence.⁴

¹ Section 316.193(1), F.S.

² Section 316.193 F.S.

³ Section 316.193(2) and (6)(a), F.S.

⁴ Florida Department of Highway Safety and Motor Vehicles, *Annual Uniform Traffic Citation Report*, available at <https://services.flhsmv.gov/SpecialtyPlates/UniformTrafficCitationReport> (last visited April 10, 2017).

Ignition Interlock Device

An ignition interlock device is a dashboard-mounted breathalyzer that requires a driver to blow in the breathalyzer in order to operate the motor vehicle.⁵ Section 316.193, F.S., requires an ignition interlock device to be installed on the vehicles of persons convicted of certain driving under the influence offenses. For a first time driving under the influence offense, the court may order the placement of an ignition interlock device for at least six continuous months.

Section 316.1937, F.S., provides that a court must determine the defendant’s ability to pay for the installation of the ignition interlock device if he or she claims inability to pay. If the court determines that the defendant is unable to pay for the installation of the device, the court can order that any portion of a fine paid for violating s. 316.193, F.S., be allocated to defray the costs of installing the ignition interlock device.⁶

Ignition interlock devices cost, on average, \$70 to \$150 to install and about \$60 to \$80 per month for monitoring and calibration.⁷

The table below summarizes when an ignition interlock device is required in Florida.⁸

Driving under the influence conviction	Ignition interlock device required
1st conviction	If court orders for at least 6 continuous months
1st conviction if blood-alcohol level is ≥ 0.15 , or minor in car	Mandatory for at least 6 continuous months
2nd conviction	Mandatory for at least 1 year
2nd conviction if blood-alcohol level is ≥ 0.15 , or minor in car	Mandatory for at least 2 continuous years
3rd conviction	Mandatory for at least 2 years

The Department of Highway Safety and Motor Vehicles (DHSMV) contracts with vendors to provide ignition interlock devices for offenders in Florida. The devices must meet or exceed the current standards of the National Highway Traffic Safety Administration.⁹ The DHSMV oversees and monitors the ignition interlock devices and must adopt rules for the implementation of ignition interlock devices.¹⁰

The Florida Legislature’s Office of Program Policy Analysis and Government Accountability conducted a study researching ignition interlock devices and driving under the influence

⁵ Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, Report No. 14-14, (December 2014) available at <http://www.opaga.state.fl.us/MonitorDocs/Reports/pdf/1414rpt.pdf> (last visited April 10, 2017).

⁶ Section 316.1937(2)(d), F.S.

⁷ MADD, *Ignition Interlock FAQ’s*, <http://www.madd.org/drunk-driving/ignition-interlocks/interlockfaq.html#D> (last visited April 14, 2017.).

⁸ Section 316.193, F.S.

⁹ Section 316.1938, F.S.

¹⁰ Sections 316.1938 and 316.193(11), F.S.

recidivism rates. The research showed that ignition interlock devices, while installed, were more effective at reducing re-arrest rates for alcohol-impaired driving when compared to other sanctions, such as license suspensions.¹¹

The study also found the six month recidivism rate for first-time driving under the influence offenders that were not required to install an ignition interlock device was 1.74 percent compared to the recidivism rate for first-time offenders required to use the ignition interlock device which was less with a rate of 0.34 percent.¹² However, only 49 percent of Florida's driving under the influence offenders installed an ignition interlock device, as required, after completing their period of license revocation.¹³

III. Effect of Proposed Changes:

The bill amends s. 316.193, F.S., to specify that a judge may order, *as a condition of probation*, placement of the ignition interlock device for at least six continuous months.

The bill also allows a defendant convicted for the first time of the second degree misdemeanor offense of driving under the influence to agree to the placement of an ignition interlock device if the defendant has not caused injury to, or the death of, a person or damage to property.

If the defendant agrees or the court orders placement of an ignition interlock device, then the court, upon proper showing that the person has received counseling, treatment, rehabilitation or is enrolled in a DHSMV-licensed substance abuse course, may withhold adjudication if the defendant does not have a prior withholding of adjudication or adjudication of guilt for any other offense. If the defendant fails to comply with the terms of the ignition interlock device, then the court may order, among other penalties, an adjudication of guilt for the defendant.

The bill defines the term "conviction" to mean a determination of guilt, which is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of *nolo contendere* is entered.

The bill also amends s. 316.1937, F.S., to repeal the current method of addressing a defendant's inability to pay for the installation of the ignition interlock device.

The bill instead specifies the following discounts on the monthly leasing fee of the ignition interlock device if a defendant claims the inability to pay for the ignition interlock device:

- If the person's family income is at or below 100 percent of the federal poverty level as documented by written order of the court, the regular monthly leasing fee charged to all customers by the interlock provider must be discounted by 50 percent.
- If the person's family income is at or below 149 percent of the federal poverty level as documented by written order of the court, the regular monthly leasing fee charged to all customers by the interlock provider must be discounted by 25 percent.

¹¹ *Supra* note 5.

¹² *Id.* at 8.

¹³ *Id.* at 4-5.

Defendants who qualify for a reduced leasing fee are not required to pay the costs of installation or removal of the ignition interlock device.

The bill is effective October 1, 2017.

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:

The bill allows certain defendants to agree or the court to order the placement of an ignition interlock device for a first time driving under the influence offense. This may have a positive fiscal impact on the companies that the DHSMV contracts with to provide the ignition interlock devices to offenders in Florida.

The bill also requires the companies who provide the ignition interlock devices to discount the monthly leasing fees in certain circumstances. If a defendant qualifies for a monthly leasing fee discount, the installation and removal fees for the ignition interlock device are also waived.

C. Government Sector Impact:

The bill allows certain defendants to agree or the court to order the placement of an ignition interlock device for a first time driving under the influence offense. The DHSMV monitors and oversees ignition interlock devices and if this bill results in a significant increase in the number of devices installed, there would be a negative indeterminate fiscal impact on the DHSMV.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill refers to a “first offense misdemeanor of the second degree” of driving under the influence. A first offense of driving under the influence, however, is not explicitly referred to as a second degree misdemeanor in the Florida Statutes, nor do the penalties assessed for a first offense of driving under the influence match the penalties associated with a second degree misdemeanor.¹⁴

In addition, s 316.656, F.S., prohibits a court from withholding adjudication of guilt or imposition of sentence for any driving under the influence violation.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.193 and 316.1937.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Transportation on April 19, 2017:

The CS adds that the defendant may only voluntarily place the ignition interlock device if convicted for the first time of the second degree misdemeanor offense of driving under the influence if the person has not caused injury to, or the death of, a person or damage to property.

The CS also provides that the court *may* (instead of *shall*) withhold adjudication if the defendant meets the requirements, and adds that the defendant, in addition to placement of the ignition interlock device, must show that he or she has received counseling, treatment, rehabilitation or is enrolled in a DHSMV-approved substance abuse course.

CS by Criminal Justice on April 3, 2017:

The committee substitute:

- Specifies that a judge may order, *as a condition of probation*, placement of the ignition interlock device for at least six continuous months.
- Allows a defendant convicted for the first time of the second degree misdemeanor offense of driving under the influence to agree to the placement of an ignition interlock device.
- Specifies that if a defendant agrees or the court orders placement of an ignition interlock device, the court must withhold adjudication if the defendant does not have a prior withholding of adjudication or adjudication of guilt for any other offense.
- Defines the term “conviction.”
- Requires the companies who provide the ignition interlock devices to discount the monthly leasing fees in certain circumstances.

¹⁴ See ss. 775.082 and 775.083, F.S., and s. 316.193, F.S.

B. Amendments:

None.

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