

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 Criminal Justice

BILL: SB 232

INTRODUCER: Senator Wright

SUBJECT: Driving Under the Influence

DATE: January 22, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 232 amends s. 316.193, F.S., prohibiting a trial court from accepting a plea of guilty or no contest to a reduced charge, including reckless driving when a person is charged with the offense of driving under the influence unless specific conditions are met.

The bill amends s. 316.1932, F.S., requiring that a person be told that his or her failure to submit to a lawful test of breath or urine is a second degree misdemeanor¹ or a first degree misdemeanor² if his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215, F.S., for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under chs. 316 or 327, F.S.

The bill amends s. 316.1939, F.S., classifying a person's first refusal to submit to a chemical or physical test of breath or urine as a second degree misdemeanor. The bill provides that a second or subsequent refusal to submit to a lawful breath, urine, or blood test is a first-degree misdemeanor.

The bill creates s. 316.19395, F.S., authorizing any judicial circuit to create a Driving Under the Influence Diversion Program. A judicial circuit that creates such a program shall publish the terms and conditions of the program on the website of the office of the state attorney. Each judicial circuit operating a Driving Under the Influence Diversion Program must report to the Florida Department of Highway Safety and Motor Vehicles (DHSMV) persons who have successfully completed the program. The DHSMV shall notate the successful participation of the diversion program on the driving record of each person.

¹ A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, as provided in s. 775.082 or s. 775.083, F.S.

² A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year and a \$1,000 fine, as provided in s. 775.082 or s. 775.083, F.S.

The bill amends s. 316.656, F.S., prohibiting a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for any violation of s. 316.1939, F.S., relating to the refusal to submit to a breath test.

The bill may have a positive indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

Testing for Alcohol, Chemical Substances, and Controlled Substances

Implied Consent

Section 316.1932, F.S., sets forth what is commonly known as the implied consent law. Specifically, s. 316.1932(1)(a)1., F.S., provides that anyone who operates a motor vehicle or vessel in the state is, by operating such a vehicle or vessel, deemed to have given his or her consent to submit to an approved chemical or physical test of his or her breath to determine the alcoholic content of his or her blood or breath or a urine test to detect the presence of chemical substances or controlled substances.³

The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215, F.S.⁴

As a result of a refusal to submit to a test or tests required under ch. 316 or ch. 327, F.S., the person shall also be told that if he or she refuses to submit to a lawful test of his or her breath and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215, F.S., for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under ch. 316 or ch. 327, F.S., he or she commits a first-degree misdemeanor.⁵

These tests may be performed if the person is lawfully arrested for any offense allegedly committed while the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical, or controlled substances.⁶

³ Sections 316.1932(1)(a)1.a., and 327.352(1)(a)1., F.S.

⁴ When a person refuses to submit to a blood test, breath test, or urine test pursuant to s. 327.352, F.S., a law enforcement officer authorized to make arrests for violations of this chapter shall file with the clerk of the court, on a form provided by the commission, a certified statement that probable cause existed to arrest the person for a violation of s. 327.35, F.S., and that the person refused to submit to a test as required by s. 327.352, F.S. Along with the statement, the officer shall also submit a sworn statement on a form provided by the commission that the person has been advised of both the penalties for failure to submit to the blood, breath, or urine test and the procedure for requesting a hearing. Section 327.35215(2), F.S.

⁵ A first-degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year and a \$1,000 fine, as provided in ss. 775.082 and s. 775.083, F.S.

⁶ Section 316.1932(1)(a)1.b., F.S.

Driving Under the Influence

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;⁷
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood;⁸ or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.⁹

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.¹⁰ 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.¹¹

III. Effect of Proposed Changes:

The bill amends s. 316.193, F.S., prohibiting a trial court from accepting a plea of guilty or no contest to a reduced charge, including a charge or reckless driving brought under s. 316.192, F.S., from a person charged with a violation of driving under the influence unless:

- The trial court determines there is a good faith basis to believe that a reduction in such charge is warranted; or
- The defendant successfully completed a Driving Under the Influence Diversion Program in accordance with s. 316.19395, F.S.

The bill amends s. 316.1932, F.S., requiring that a person be told that his or her failure to submit to a lawful test of breath or urine is a second degree misdemeanor¹² or a first degree misdemeanor¹³ if his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215, F.S., for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under chs. 316 or 327, F.S.

The bill amends s. 316.1939, F.S., classifying a person's first failure to submit to a lawful breath or urine test as a second-degree misdemeanor. The bill provides that a second or subsequent refusal to submit to a lawful breath, urine, or blood test is a first-degree misdemeanor.

⁷ Section 316.193(1)(a), F.S.

⁸ Section 316.193(1)(b), F.S.

⁹ Section 316.193(1)(c), F.S.

¹⁰ Section 316.193, F.S.

¹¹ Section 316.193(2)(a), F.S.

¹² A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, as provided in s. 775.082 or s. 775.083, F.S.

¹³ A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year and a \$1,000 fine, as provided in s. 775.082 or s. 775.083, F.S.

The bill creates s. 316.19395, F.S., authorizing any judicial circuit to create a Driving Under the Influence Diversion Program. A judicial circuit that creates such a program shall publish the terms and conditions of the program on the website of the office of the state attorney. Each judicial circuit operating a Driving Under the Influence Diversion Program must report to the DHSMV persons who have successfully completed the program. The DHSMV shall notate the successful participation of the diversion program on the driving record of each person.

The bill provides that if, after successfully completing a diversion program, a person is charged with a new driving under the influence offense, the person may not participate in a subsequent Driving Under the Influence Diversion program.

The bill amends s. 316.656, F.S., prohibiting a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for any violation of s. 316.1939, F.S., relating to the refusal to submit to a breath test.

The bill is effective October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate impact on the anticipated judicial or court workload. Provisions prohibiting acceptance of a plea to reduced DUI charges under specified circumstances and reporting requirements for DUI diversion programs are not likely to have a significant impact on judicial workload; however, the bill may encourage judicial circuits to implement a DUI Court (currently there are four DUI Courts operating statewide). The effect on workload from establishing a new misdemeanor offense for first refusals is too speculative to quantify.¹⁴

This bill may have a fiscal impact to the clerks of the circuit court in judicial circuits which establish DUI diversion programs because they will be required to report to the department regarding persons who successfully complete a DUI diversion program.¹⁵

Additionally, the DHSMV estimates that 128 hours will be required for programming and implementation. These hours are estimated to have a fiscal impact on the department of \$8,063 in FTE and contracted resources.¹⁶

The results of the DUI Diversion Program reported by the court will need to be recorded on the driver history of a driver that successfully completes a DUI Diversion Program. The result of the DUI Diversion Program will need to be treated as a first DUI for a second or subsequent DUI if the driver receives another DUI after the completion of the DUI Diversion Program. The successful completion of the DUI Diversion Program should be recorded on the driver history as a correspondence code and the retention time is 75 years, the same as a DUI conviction.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.193, 316.1932, 316.1939, and 316.656.

This bill creates section 316.19395 of the Florida Statutes.

¹⁴ Office of the State Courts Administrator, *2024 Judicial Impact Statement* on SB 232, pg. 2 (on file with the Senate Committee on Criminal Justice).

¹⁵ DHSMV, *2024 Agency Legislative Bill Analysis on SB 232* (November 14, 2023), at pg. 5 (on file with the Senate Committee on Criminal Justice).

¹⁶ *Id.*

¹⁷ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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