

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 261 CS

Driving Under the Influence

SPONSOR(S): Harrell

TIED BILLS:

IDEN./SIM. BILLS: SB 530

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|------------------------|-----------------|----------------|
| 1) <u>Transportation Committee</u> | <u>12 Y, 0 N, w/CS</u> | <u>St.Fleur</u> | <u>Miller</u> |
| 2) <u>Criminal Justice Committee</u> | <u></u> | <u>White</u> | <u>Kramer</u> |
| 3) <u>Transportation & Economic Development Appropriations Committee</u> | <u></u> | <u></u> | <u></u> |
| 4) <u>State Infrastructure Council</u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

HB 261 provides the Florida Department of Highway Safety and Motor Vehicles (department) independent authority to administer the ignition interlock program. The program is currently administered by the courts and by the department pursuant to court order under Chapter 316, Florida Statutes. The bill authorizes the department to require the placement of an approved ignition interlock device on specified convicted DUI offenders' vehicles prior to issuing the person a permanent or restricted driver's license. The bill also permits the department to immediately require the device be installed if the court fails to order the installation on an offender's vehicle. The bill allows exceptions to these interlock requirements based on medical conditions. In addition, the bill allows a portion of the DUI fine paid by an indigent offender to be used to pay the monthly fees, surcharges, insurance and deposit costs of a required interlock device. Finally, the bill specifies the duration of each installation period based upon the number of DUI convictions. This bill creates section 322.2715 of the Florida Statutes.

The bill appears to have no fiscal impact and becomes effective July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- Independent authority to require the placement of ignition interlock devices is provided to the department without a court order.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Background on Penalties for Persons Convicted of DUI

A conviction for DUI requires proof the person was driving or in actual physical control of a vehicle and either: (1) the person's blood-alcohol or breath-alcohol level at the time was .08 percent or greater; or (2) the person was under the influence of alcohol, a chemical substance or a controlled substance to the extent their normal faculties were impaired¹. Penalties for DUI vary according to the number of previous convictions, the offender's blood-alcohol or breath-alcohol level (BAL) when arrested, and whether serious injury or death results.

Generally, modified misdemeanor penalties apply when there has been no property damage or personal injury and when there have been fewer than three DUI convictions. For example, a first-time offender is subject to a fine ranging from \$250 to \$500, as well as being subject to serving up to 6 months in county jail. The offender must also be on probation for up to 1 year and participate in 50 hours of community service. However, if the convicted offender's BAL is .20 percent or higher, or if a passenger under 18 years of age is present in the vehicle, the penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months.

A second DUI conviction carries a fine ranging from \$500 to \$1,000 and imprisonment for a period of up to 9 months. However, if that offense occurs within 5 years of a previous DUI conviction, there is a mandatory imprisonment period of at least 10 days. At least 48 hours of this confinement must be consecutive. Enhanced penalties also apply when the offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle. These penalties require a fine ranging from \$1,000 to \$2,000, and imprisonment not exceeding 12 months.

A third or subsequent DUI conviction occurring more than 10 years after a prior conviction carries a fine ranging from \$1,000 to \$2,500 and possible imprisonment of up to 12 months. However, if that offense occurs within 10 years of a previous DUI conviction, it is a third degree felony, punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years. There is also a 30-day minimum mandatory imprisonment period. At least 48 hours of this confinement must be consecutive. The offense of felony DUI for a third conviction within 10 years of a prior conviction is a level 3 offense in the offense severity ranking chart. Enhanced penalties also apply when a third-time (or subsequent) offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle or vessel while the driver is DUI. These penalties require a fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months.

¹ See s. 316.193 (1), F.S.

A fourth or subsequent DUI conviction is a third degree felony penalty, which is punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years. The offense of felony DUI for a fourth or subsequent DUI offense is ranked within level 6 of the offense severity ranking chart.

Pursuant to s. 316.193(2), F.S., the penalties for DUI and for DUI with a blood alcohol level above .20 or when the driver was accompanied in the vehicle with a person under the age of 18 are summarized in the chart as follows:

Penalties for DUI based on Convictions

| | Maximum Incarceration | Incarceration Over .20 BAL or w/Minor | Fine | Fine Over .20 BAL or w/Minor |
|---|------------------------------|--|-----------------|-------------------------------------|
| 1st Offense | 6 months jail | 9 months jail | \$250-\$500 | \$500-\$1,000 |
| 2nd Offense | 9 months jail | 12 months jail | \$500-\$1,000 | \$1,000-\$2,000 |
| 3rd Offense more than 10 years after prior offense | 12 months jail | 12 months jail | \$1,000-\$2,500 | \$2,000-\$5,000 |
| 3rd Offense within 10 years of prior conviction, or 4th Offense (3rd degree felony) | 5 years prison | 5 years prison | \$1,000-\$5,000 | \$1,000-\$5,000 |

Section 316.193, F.S., also provides penalties for a person who operates a vehicle while under the influence and causes or contributes to damage to the property or person of another, serious bodily injury to another or the death of another (DUI manslaughter). A DUI offense involving property damage results in a first degree misdemeanor penalty, punishable by a fine not exceeding \$1,000 and/or imprisonment up to 1 year in jail. A DUI offense involving serious injury results in a third degree felony, punishable by a fine not exceeding \$5,000 and/or imprisonment up to 5 years. A DUI offense resulting in death is a second-degree felony, punishable by a fine not exceeding \$10,000 and/or imprisonment up to 15 years.

In addition to these penalties, a DUI conviction also results in driver's license revocation under s. 322.28, F.S., as follows: at least 180 days to 1 year for a first conviction; at least 5 years for a second conviction within 5 years of a prior conviction; at least 10 years for a third conviction within 10 years from the first of three or more prior convictions; and permanent revocation for a fourth conviction.

Ignition Interlock Devices

Section 316.193, F.S., also requires ignition interlock devices to be installed on the vehicles of certain persons convicted of DUI after July 1, 2002, and who qualify for a permanent or restricted license. 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 blood alcohol level above .20 or if a passenger under 18 years of age is present in the vehicle. Upon a second DUI conviction, the law requires the placement of an interlock device on all vehicles owned or leased by the offender for at least one year. Upon a third DUI conviction, the court must order an ignition interlock device to be installed for at least 2 years. The ignition interlock device must be of a type approved by the department and must be placed 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.

Section 316.1937, F.S., allows a judge to 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 interlock device certified by the department and installed in such a manner the vehicle will not start if the operator's blood alcohol level is in excess of .05 percent or as otherwise specified by the court. However, the court is required to order the placement of an ignition interlock device in those circumstances required by s. 316.193, F.S. 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 uses of an ignition interlock device, the court must: (1) stipulate on the record the requirement for, and the period of, the uses of a certified ignition interlock device; (2) order the records of the department reflect such requirement; (3) order an ignition interlock device 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 ignition interlock device, 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.² The cost, plus tax, to the convicted person for an ignition interlock device is \$70 for installation, \$67.50 for monthly monitoring and calibration, and a \$100 refundable deposit or a \$5 monthly insurance charge.

Section 316.1938, F.S., requires the department to certify the accuracy and precision of ignition interlock devices. Pursuant to s. 316.193(2) and (4), F.S., the ignition interlock device penalties for DUI and for DUI with a blood alcohol level above .20 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 | Ignition Interlock Device Requirement |
|---|--|
| 1st Conviction | If court ordered |
| 1st Conviction if .20 BAL or w/Minor in Car | Up to 6 months |
| 2nd Conviction | At least 1 year |
| 2nd Conviction if .20 BAL or w/Minor in Car | At least 2 years |
| 3rd Conviction | At least 2 years |

The department has encountered some adverse court rulings as to its ability to require convicted DUI drivers to obtain ignition interlocking devices on their cars, when the trial court has not specifically ordered the placement of the device statutorily mandated by s. 316.193(2)(a) and (4)(c), F.S., in an individual case. Some courts have not ordered the statutory mandatory provisions requiring such devices, and the Third District Court of Appeals recently held that -the department has no independent authority under s. 316.193, F.S. to require such devices.³

The current ignition interlock program has been in place since February 1, 2004. Since the programs inception, according to the department as of November 30, 2004, there have been 4,621 people who had an ignition interlock device installed. In an effort to determine the program's effectiveness, the department gathered the following information:

- There have been 4,035 reported initial 5-minute lockouts due to an alcohol reading above .05. Of this population, 1,211 clients produced these 4,035 reported lockouts; 672 were responsible for two or more of the 4,035 reported lockouts. In addition, 1,282 of the reported lockouts were recorded at a .08 or above reading.

² See s. 316.1937(2)(d), F.S.

³ *Department of Highway Safety and Motor Vehicles v. Aultman*, 2005 WL 544844 (Fla. 3rd DCA 2005).

- There were 1,524 reported secondary 30-minute lockouts based on two alcohol readings above .05 within a 3-hour period. There were 614 drivers who created these violations. Of the 614, there were 275 people who were responsible for 2 or more of the violations; 261 of these violations were recorded at a .08 or above reading.
- Since the inception of the program, 4 of the 4,621 participants have been arrested for a DUI while on the program (0.0009%). It is unclear if they were in a vehicle equipped with an interlock at the time of the arrest. Of the 4,621, there were 2 arrested for DUI after removing the device.

Effect of Proposed Changes

The bill creates s. 322.2715, F.S., which permits the department to require the placement of an approved ignition interlock device on specified convicted DUI offenders' vehicles prior to issuing such person a permanent or restricted driver's license. However, the bill is limited to the circumstances delineated in s. 316.193, F.S., where interlocks are mandatory.

The bill also specifies the duration of each installation period based upon the number of DUI convictions as required under s. 316.193, F.S. Specifically, the bill requires 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 blood alcohol level above .20 percent or if a passenger under 18 years of age is present in the vehicle. Upon a second DUI conviction, the placement of an interlock device is required on all vehicles owned or leased by the offender for at least one year.

Upon a third DUI conviction, the ignition interlock device must be installed for at least 2 years. In addition, the bill permits the department to immediately require the device be installed if the court fails to so order such installation on a convicted offender's vehicle. Exceptions can be made to individuals with a documented medical condition that would prohibit the device from functioning normally. If the court determines that the convicted offender is unable to pay for installation of the device, the court may order that any portion of a fine paid by the person for a DUI violation be allocated to defray the costs of installing the device and paying the monthly fees, surcharges, insurance and deposit costs. Finally, the bill clarifies the mandate of the department to require the placement of an approved ignition interlock device on specified convicted DUI offenders' vehicles applies to the reinstatement of the driving privilege following a revocation, suspension, or cancellation of a DUI offense occurring on or after July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 322.2715, F.S., to direct DHSMV to require ignition interlock devices for certain DUI related convictions.

Section 2. Provides that the bill is effective July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain persons convicted of DUI offenses where the court has not ordered ignition interlock devices will have to pay for the installation and maintenance of the devices on their vehicles.

D. FISCAL COMMENTS:

The cost, plus tax, to the convicted person for an ignition interlock device is \$70 for installation, \$67.50 for monthly monitoring and calibration, and a \$100 refundable deposit or a \$5 monthly insurance charge.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No exercise of rule-making authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Under s. 316.1937(2)(d), F.S., the trial court, in determining a person's ability to pay for installation of an ignition interlock device, may order that any portion of the fine paid for DUI be allocated to defray the costs of installing the device. The bill adds that such fine may also be used, ". . . to pay the monthly fees, surcharges, insurance costs, and deposit costs." Presumably, the bill's addition refers to such costs related to the ignition interlock device; however, this is not specified. The Legislature may wish to amend the bill so that it provides that the fine may be allocated, ". . . to defray the costs of installation, monthly fees, surcharges, insurance costs, and deposits for the device."

In s. 322.2715(1) through (3), F.S., the bill requires the department, prior to issuing a permanent or restricted driver's license, to require placement of an ignition interlock device for specified DUI convictions. The specified convictions are described in s. 322.2715(3)(a) through (d) of the bill and the descriptions mirror the convictions described in s. 316.193(2), F.S., which require courts to order placement of an ignition interlock device for specified periods of time. This portion of the bill presents the following issues:

- The bill does not specify that the department's duty, under s. 322.2715(1) through (3), F.S., to order placement of an ignition interlock device is limited to situations where the court has failed to order such placement. Thus, it is unclear whether these provisions of the bill could be construed to authorize the department to enter an ignition interlock order that conflicts with a court ignition interlock order. The Legislature may wish to clarify the bill by indicating that the department's duty to enter such order only applies where the court has failed to do so.
- Currently s. 316.1937(2)(d), F.S., requires the court when ordering placement of an ignition interlock device to determine the person's ability to pay for the device if that person asserts an inability to pay. Further, a court ignition interlock device order is considered the imposition of a criminal penalty and as such, may be appealed.⁴ The bill does not make any provision for the department to conduct an ability to pay determination and does not specify if a department ignition interlock order may be appealed. These distinctions raise public policy issues and additionally, may subject the bill to court challenges based on due process grounds.⁵ The Legislature may wish to clarify the bill to provide that persons claiming an inability to pay may request a court hearing on that inability under s. 316.1937(2)(d), F.S., and to provide that department ignition interlock orders may be appealed, like other department orders, via writ of certiorari pursuant to s. 322.31, F.S.
- Currently s. 316.193, F.S., specifies that a convicted person, who must be ordered by a court to use an ignition interlock device, is solely responsible for paying for that device. The bill does not specify who is responsible for paying for a department ordered ignition interlock device. The Legislature may wish to clarify the bill on this point for purposes of department orders.
- The bill does not specify when the DUI offense that serves as the trigger for the required department ignition interlock order must have occurred. In order to avoid Ex Post Facto challenges, the Legislature may wish to amend the bill so that it applies only to convictions for offenses that occurred on or after the bill's effective date of July 1, 2005.

In s. 322.2715(4), F.S., the bill provides that the department must immediately require the installation of an ignition interlock device when a court has failed to require such installation in contravention of ss. 316.193 or 316.1937, F.S. This subsection poses the same issues discussed above for subsections (1) through (3), with the exception that it avoids any Ex Post Facto issues by limiting its application to offenses committed on or after July 1, 2005. Further, it is unclear why this subsection is necessary given the broader authority conferred upon the department to order ignition interlock devices in subsections (1) through (3).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2005, the Committee on Transportation adopted two amendments to HB 261. Amendment # 1 by Representative Harrell conformed the bill to its companion, SB 530. The amendment provided an exception for consideration to be given to individuals with a documented medical condition prohibiting the ignition interlock device from functioning normally.

Amendment # 2 by Representative Robaina allows a portion of a fine, paid by the person for a DUI violation, to be allocated to defray the costs, monthly fees, surcharges, insurance and deposit costs related to interlock devices. Currently, the court may order that any portion of a fine paid by the person for a DUI violation be allocated to defray only the costs of installing the device.

The bill was reported favorably with committee substitute incorporating these amendments.

⁴ *Department of Highway Safety and Motor Vehicles v. Aultman*, 2005 WL 544844 (Fla. 3rd DCA 2005).

⁵ *Department of Highway Safety and Motor Vehicles v. Pitts*, 815 So.2d 738 (Fla. 1st DCA 2002)(holding that the suspension of a driver's license for statutorily defined cause implicates a protectable property interest and that due process applies to its denial).