

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 261 CS

Driving Under the Influence

**SPONSOR(S):** Harrell

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 530

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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>5 Y, 0 N, w/CS</u>	<u>White</u>	<u>Kramer</u>
3) <u>Transportation &amp; 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>

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### SUMMARY ANALYSIS

Committee substitute for committee substitute for HB 261 (hereinafter referred to as, "the bill") requires the Florida Department of Highway Safety and Motor Vehicles (department), prior to reinstating a permanent or restricted license, to require placement of an ignition interlock for persons convicted of driving under the influence (DUI) when the court has failed to order placement of the device as specified in s. 316.193, F.S. The bill provides an exception to this requirement, which permits the department, in its discretion, to issue a license without requiring interlock installation if the person has a medical condition that prohibits an interlock from functioning properly.

Further, the bill provides that the person subject to the department interlock requirement: (a) is responsible for paying all costs associated with the interlock; (b) may, if indigent, petition the court for an inability to pay determination and may, upon court order, have interlock-related costs defrayed by his or her DUI fine; and (c) may seek review of the interlock requirement by writ of certiorari filed in circuit court.

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 without court order is provided to the department.

#### 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 impaired.<sup>1</sup> 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.<sup>2</sup> The offender must also be on probation for up to 1 year and participate in 50 hours of community service.<sup>3</sup> 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.<sup>4</sup>

A second DUI conviction carries a fine ranging from \$500 to \$1,000 and imprisonment for a period of up to 9 months.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> There is also a 30-day minimum mandatory imprisonment period. At least 48 hours of this confinement must be consecutive.<sup>10</sup> The offense of felony DUI for

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<sup>1</sup> See Section 316.193 (1), F.S.

<sup>2</sup> Section 316.193(2)(a), F.S.

<sup>3</sup> Section 316.193(6)(a), F.S.

<sup>4</sup> Section 316.193(4), F.S.

<sup>5</sup> Section 316.193(2)(a), F.S.

<sup>6</sup> Section 316.193(6)(b), F.S.

<sup>7</sup> Section 316.193(4), F.S.

<sup>8</sup> Section 316.193(2)(b)2., F.S.

<sup>9</sup> Section 316.193(2)(b)1., F.S.

a third conviction within 10 years of a prior conviction is a level 3 offense in the offense severity ranking chart.<sup>11</sup> Enhanced fines 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 fines range from \$2,000 to \$5,000.<sup>12</sup>

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.<sup>13</sup> The offense of felony DUI for a fourth or subsequent DUI offense is ranked within level 6 of the offense severity ranking chart.<sup>14</sup>

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**

	<b>Maximum Incarceration</b>	<b>Incarceration Over .20 BAL or w/Minor</b>	<b>Fine</b>	<b>Fine Over .20 BAL or w/Minor</b>
<b>1<sup>st</sup> Offense</b>	6 months jail	9 months jail	\$250-\$500	\$500-\$1,000
<b>2<sup>nd</sup> Offense</b>	9 months jail	12 months jail	\$500-\$1,000	\$1,000-\$2,000
<b>3<sup>rd</sup> Offense more than 10 years after prior offense</b>	12 months jail	12 months jail	\$1,000-\$2,500	\$2,000-\$5,000
<b>3<sup>rd</sup> Offense within 10 years of prior conviction, or 4<sup>th</sup> Offense (3<sup>rd</sup> degree felony)</b>	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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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;<sup>18</sup> at least 5 years for a second conviction within 5 years of a prior conviction;<sup>19</sup> at least 10 years for a third conviction within 10 years from the first of three or more prior convictions;<sup>20</sup> and permanent revocation for a fourth conviction.<sup>21</sup>

<sup>10</sup> Section 316.193(6)(c), F.S.

<sup>11</sup> Section 921.0022(3), F.S.

<sup>12</sup> Section 316.193(4), F.S.

<sup>13</sup> Section 316.193(2)(b)3., F.S.

<sup>14</sup> Section 921.0022(3), F.S.

<sup>15</sup> Section 316.193(3)(c)1., F.S.

<sup>16</sup> Section 316.193(3)(c)2., F.S.

<sup>17</sup> Section 316.193(3)(c)3., F.S.

<sup>18</sup> Section 322.28(2)(a)1., F.S.

<sup>19</sup> Section 322.28(2)(a)2., F.S.

<sup>20</sup> Section 322.28(2)(a)3., F.S.

<sup>21</sup> Section 322.28(2)(e), F.S.

## 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.<sup>22</sup> 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.<sup>23</sup> Upon a third DUI conviction, the court must order an ignition interlock device to be installed for at least 2 years.<sup>24</sup> 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.<sup>25</sup>

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 use 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.<sup>26</sup> 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.<sup>27</sup> 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
<b>1<sup>st</sup> Conviction</b>	If court ordered
<b>1<sup>st</sup> Conviction if .20 BAL or w/Minor in Car</b>	Up to 6 months
<b>2<sup>nd</sup> Conviction</b>	At least 1 year

<sup>22</sup> Section 316.193(4)(c), F.S.

<sup>23</sup> Section 316.193(2)(a)3., F.S.

<sup>24</sup> Section 316.193(2)(b)1., F.S.

<sup>25</sup> Sections 316.193 and 316.1937, F.S.

<sup>26</sup> Section 316.1937(2), F.S.

<sup>27</sup> Section 316.1937(2)(d), F.S.

<b>2<sup>nd</sup> Conviction if .20 BAL or w/Minor in Car</b>	At least 2 years
<b>3<sup>rd</sup> Conviction</b>	At least 2 years

The department has encountered some adverse court rulings as to its ability to require convicted DUI drivers to install ignition interlock devices, when the trial court has not ordered the placement of the device although statutorily required by s. 316.193(2)(a) and (4)(c), F.S., to enter such orders. 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.<sup>28</sup>

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.
- 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 amends s. 316.193(2), F.S., to expand the court's authority so that it may defray the costs of monthly fees, surcharges, insurance, and deposits for an interlock with a portion of an indigent person's DUI fine. Current law only authorizes the court to defray the cost of installing the interlock with a portion of a DUI fine.

The bill creates s. 322.2715, F.S., to mandate that the department, prior to reinstating a permanent or restricted license, require placement of an ignition interlock for a person convicted of DUI when the court:

- Has failed to order placement of the device when required by s. 316.193, F.S.; or
- Has ordered placement of the device, but has failed to require its use for the following time periods specified in subsection (2):
  - Six months for a first DUI offense if the person had an unlawful breath or blood alcohol level as specified in s. 316.193(4), F.S., or was accompanied by a person under 18 years of age during the offense.
  - At least one year for a second DUI offense.
  - At least two years for a second DUI offense if the person had an unlawful breath or blood alcohol level as specified in s. 316.193(4), F.S., or was accompanied by a person under 18 years of age during the offense.
  - At least two years for a third DUI offense.

<sup>28</sup> *Department of Highway Safety and Motor Vehicles v. Aultman*, 2005 WL 544844 (Fla. 3<sup>rd</sup> DCA 2005).

The bill provides an exception to when the department must require the interlock, which permits the department, in its discretion, to issue a license without an interlock requirement if the person has a medical condition that prohibits an interlock from functioning properly.

The bill also provides in regard to department interlock requirements that the period of interlock placement shall be for the minimum time applicable under subsection (2), and that the person subject to the department interlock requirement: (a) must provide proof of installation to the department; (b) must place the interlock on all vehicles that are individually or jointly leased or owned and routinely operated by the person; (c) is responsible for paying all costs associated with the interlock; (d) may, if indigent, petition the court for an inability to pay determination; and (e) may seek review of the interlock requirement by writ of certiorari filed in circuit court.

Finally, the bill provides that s. 322.2715, F.S., only applies to the reinstatement of the driving privilege following a revocation, suspension, or cancellation that is based upon a DUI conviction that was committed on or after the bill's effective date of July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.1937(2)(d), F.S., to specify the types of interlock-related costs that may be defrayed by the DUI fine paid by an indigent convict.

Section 2. Amends s. 322.2715, F.S., to direct the department to require an ignition interlock device under specified circumstances; provides policies and procedures applicable to department ignition interlock requirements.

Section 3. Provides that the bill takes effect on 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 prior to having a permanent or restricted license reinstated.

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:

None.

**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.

On April 6, 2005, the Committee on Criminal Justice adopted an amendment that: (a) clarifies that only costs for an ignition interlock may be defrayed by the DUI fine paid by an indigent person; (b) provides that the department may only require the interlock when the court has failed to do so although required by law; (c) provides limits on the duration of department interlock requirements; (d) permits persons subject to a department interlock order to request court review for an inability to pay or other challenges; and (e) provides that the bill only applies to offenses occurring on or after the bill's effective date. The bill was reported favorably with a committee substitute incorporating the amendment.