

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 165 Penalties for Driving Under the Influence

SPONSOR(S): Nehr

TIED BILLS: IDEN./SIM. BILLS: SB 470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Padgett	Kramer
2) Roads, Bridges & Ports Policy Committee			
3) Criminal & Civil Justice Policy Council			
4) Criminal & Civil Justice Appropriations Committee			
5) Full Appropriations Council on General Government & Health Care			

SUMMARY ANALYSIS

Currently, a mandatory condition of probation for a first conviction for driving under the influence requires that the defendant perform 50 hours of community service. If the court determines that it is in the best interests of the state, in lieu of the 50 hours of community service, the defendant may pay a fine of \$10 per hour for each hour of community service ordered by the court.

HB 165 amends s. 316.193(6), F.S. to narrow the factors a judge may consider in determining whether to permit the defendant to pay a fine in lieu of community service. The bill provides the court may consider *only* the defendant's place of residence, location of the defendant, or the defendant's employment. The bill also provides the standard the court must consider is whether the community service hours would create an undue hardship on the defendant, rather than whether payment of the fine is in the best interests of the state.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, s. 316.193, F.S. provides that a person commits the offense of driving under the influence (DUI) if the person is driving or in actual physical control of a motor vehicle and:

- is under the influence of alcoholic beverages, chemical substances, or controlled substances to the extent that the person's normal faculties are impaired; or
- the person has a blood alcohol level of .08 or more grams of alcohol per 100 milliliters of blood; or
- the person has a breath-alcohol level of .08 or more grams of alcohol per 210 liters of breath.¹

The mandatory penalties for a first time DUI conviction include:

- a maximum of one year probation
- a fine of not less than \$500 and not more than \$1,000
- imprisonment for not more than 6 months
- completion of a DUI substance abuse program
- community service of a minimum 50 hours
- 10 day impoundment of the defendant's vehicle²

In lieu of 50 hours of community service, the court may order the defendant to pay \$10 per each hour of each hour of community service required.³ To convert the community service requirement to a fine, the court must consider whether payment of a monetary fine is in the best interests of the state.⁴ In making this determination, the only factor explicitly listed the court may consider is the residence or location of the defendant during the probationary period.⁵

¹ Section 316.193(1)(a), F.S.

² Sections 316.193(1) – (6), F.S. The penalties for second or subsequent DUI convictions increase to varying degrees, however only a first DUI conviction requires community service as a mandatory condition of probation.

³ Section 316.193(6)(a), F.S. For example, in a typical circumstance, 50 hours of community service would be equivalent to a \$500 fine.

⁴ Id.

⁵ Id. (i.e. defendant lives out of state)

Proposed Changes

The bill amends s. 316.193(6)(a), F.S. to narrow the factors on which the court must base its decision in determining whether the community service requirement can be converted into an additional fine. The bill changes the standard from "the best interests of the state," to whether the community service requirement would create an "undue hardship for the defendant." The bill also amends s. 316.193(6)(a), F.S. to provide that the *only* circumstances the court can take into account when making such a determination are the residence and location of the defendant, and adds the court may also consider the defendant's employment obligations.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.193, F.S., relating to driving under the influence; penalties.

Section 2: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In narrowing the standard judges can consider in determining whether to allow a defendant to pay a monetary fine in lieu of community service to three criteria, it is likely that fewer defendants would be eligible to pay the fine. In the event fewer people are paying fines, the revenue currently gained from those fines would decrease.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES