

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 Criminal Justice Committee

BILL: SB 1790

INTRODUCER: Senator Storms

SUBJECT: Driving Under the Influence

DATE: March 29, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Spalla	TR	Favorable
2.	Dugger	Cannon	CJ	Favorable
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill prohibits any state or local law enforcement agency from operating a “no refusal” driving under the influence (DUI) checkpoint at which a judge is present on-site to issue a warrant for a blood test without the person’s consent.

This bill creates a new unnumbered section of the Florida Statutes.

II. Present Situation:

Currently, s. 316.1932, F.S., allows a law enforcement officer to request a blood test of a person who is suspected of operating a motor vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances if that person appears for treatment in a hospital, clinic, or other medical facility and a breath or urine test is impractical. These tests must conform to the rules promulgated by the Alcohol Testing Program within the Department of Law Enforcement. Refusal to take the blood test causes the driver to have their driver’s license suspended for a period of 1 year for a first refusal, or 18 months if the driver had previously had their license suspended for refusing a blood test or other such test. Also, s. 316.1933, F.S., mandates that a blood test be performed, with an authorized use of reasonable force, on a driver whom a law enforcement officer has probable cause to believe is driving under the influence of alcoholic beverages, chemical substances, or controlled substances and has caused serious bodily injury or death to a human being.

According to the Department of Highway Safety and Motor Vehicles, “no refusal” DUI checkpoints, as they have been run thus far in the state of Florida, consist of a traditional DUI checkpoint with the addition of an Assistant State Attorney (ASA), blood-draw technicians

possibly being on-site with the officers, and with an on-call judge who may or may not be on-site. Once a driver is stopped at the checkpoint, the officer first must determine if probable cause exists that the driver is under the influence of drugs or alcohol to the extent his/her normal faculties are impaired. Such determinations are made by the officer on the basis of factors including but not limited to the odor of alcohol, slurred speech, blood-shot eyes, stumbling, and fumbling for his or her driver's license. At a DUI checkpoint an officer must base the probable cause determination more heavily on these factors than he would at a routine traffic stop because usually the checkpoint officer would lack any observation of erratic driving.

Once probable cause is determined, the driver is asked to submit to a breath alcohol test. Under no circumstances would every driver stopped at a "no refusal" DUI checkpoint be asked to submit to a breath test without the requisite determination of probable cause. If a driver for whom probable cause has been established refuses the breath test, the officer will complete an application for a search warrant, which includes an affidavit of probable cause, which when approved by the on-site ASA is delivered to the on-call judge either by the officer or with an electronic file transfer. After review the on-call judge may issue a warrant. Only then could the driver's blood be drawn for testing.¹

III. Effect of Proposed Changes:

Section 1 would prohibit any state or local law enforcement agency from conducting a "no refusal" DUI checkpoint where a judge is present on site to issue a warrant for a blood test without the driver's consent.

Section 2 creates an effective date of July 1, 2011.

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.

¹ Telephone communications with the General Counsel and staff of the Department of Highway Safety and Motor Vehicles on March 18, 2011, and March 21, 2011.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.