

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 681 Driving Under the Influence
SPONSOR(S): Transportation & Highway Safety Subcommittee and Baxley
TIED BILLS: **IDEN./SIM. BILLS:** SB 864

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 0 N, As CS	Kiner	Kruse
2) Criminal Justice Subcommittee			
3) Transportation & Economic Development Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill widens a criminal court's discretion in ordering probation for driving under the influence ("DUI"). Specifically, the bill gives a criminal court the choice of ordering, at the time of sentencing, either of the following as a condition of probation:

- the impoundment or immobilization of the vehicle that was operated by, or was in the actual control of, the offender or any vehicle registered in the offender's name at the time of impoundment or immobilization; or
- the installation of an ignition interlock device ("IID") on all vehicles that are individually or jointly leased or owned and routinely operated by the offender.

If the court elects to order IID installation, it may not occur concurrently with imprisonment or concurrently with any driver's license suspension. The period of installation will vary depending on the offender's previous convictions. The bill sets the following installation periods:

- three continuous months for the first conviction;
- six continuous months for a second conviction (within five years); or
- one year for a third or subsequent conviction (within ten years after a prior conviction).

The bill has an indeterminate fiscal impact.

The bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Statistics on Alcohol-impaired Driving

Highway deaths fell in 2010 to their lowest level since 1949,¹ despite the fact that American drivers traveled nearly 46 billion more miles in 2010 than in 2009.² However, alcohol-impaired driving remains a serious and dangerous issue. According to the National Conference of State Legislatures, there were 10,228 alcohol-impaired traffic fatalities in 2010.³ This figure represents 31 percent of all motor vehicle fatalities.⁴ According to the American Automobile Association (“AAA”), alcohol is a factor in about 40 percent of traffic fatalities each year and nearly 1.5 million people are arrested annually for driving under the influence of alcohol or drugs.⁵ There are social costs as well. The National Highway Traffic Safety Administration (“NHTSA”) estimates alcohol-related crashes in the United States cost the public \$114.3 billion in 2000, including \$51.1 billion in monetary costs and an estimated \$63.2 billion in quality of life losses.⁶

According to the Florida Department of Highway Safety and Motor Vehicles (“DHSMV”), there are 62,275 arrests in Florida annually for DUI, of which 14,140 (22%) are second or third-time offenders.⁷

Federal DUI Law

Title 23 U.S.C., § 164, and its implementing regulations, 23 C.F.R., Part 1275, set minimum penalties for repeat DUI offenders. Among other things, this federal law requires that an individual convicted of a second or subsequent offense of DUI shall be subject to either a mandatory “hard” license suspension for at least one year, or a “hard” license suspension of at least forty-five days followed by a reinstatement of restricted driving privileges for the remainder of the one year suspension period. The restricted driving privileges shall occur concurrently with IID installation and the privileges must be restricted to driving to and from work, school, or an alcohol treatment program.

Additionally, the offender shall be subject to the impoundment or immobilization of each of his or her motor vehicles or installation of an IID on each of his or her motor vehicles.

Florida DUI Law

Elements of the Offense

Section 316.193, F.S., provides that a person is guilty of the offense of DUI if the person is driving or in actual physical control of a vehicle and either:

- is under the influence of alcoholic beverages, any chemical substance, or any controlled substance to the extent the person’s normal faculties are impaired; or
- has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or

¹ See the American Association of State Highway and Transportation Officials (“AASHTO”) press release on “NHTSA Updates 2010 Death Count; Releases Distracted Driving Survey.” The press release may be viewed at <http://www.aashtojournal.org/Pages/120911deaths.aspx> (Last viewed 1/10/2012).

² See the United States Department of Transportation’s press release titled “U.S. Transportation Secretary LaHood Announces Lowest Level of Annual Traffic Fatalities in More than Six Decades.” The press release may be viewed at <http://www.dot.gov/affairs/2011/nhtsa2111.html> (Last viewed 1/10/2012).

³ See the National Conference of State Legislatures website at <http://www.ncsl.org/IssuesResearch/Transportation35/AlcoholImpairedDrunkDriving/tabid/24003/Default.aspx?TabId=24003> (Last viewed 1/10/2012).

⁴ Id.

⁵ Id.

⁶ See National Highway Safety Administration. “Repeat DWI Offenders Are an Elusive Target.” Washington, DC: National Department of Transportation, National Highway Traffic Safety Administration Traffic Tech No. 217, March 2000. <http://www.aaafoundation.org/pdf/2010TSCIndexFinalReport.pdf> (Last viewed 1/10/2012).

⁷ 2012 DHSMV Agency Analysis for HB 681.

- has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

Criminal Penalties

Criminal penalties vary depending on the number of previous convictions (and their relationship in time to one another), the offender's breath-alcohol content ("BAC") or blood-alcohol content ("BAC") when arrested and the age of passengers in the vehicle at the time of arrest.

A first-time offender is subject to a fine ranging from \$500 to \$1,000, as well as imprisonment for up to six months and a driver's license suspension (six months to one year). The offender must also be placed on probation for up to one year and participate in fifty hours of community service. As a condition of probation, the offender's vehicle is impounded or immobilized for a period of ten days (or the unexpired term of any lease or rental agreement that expires within ten days) and the impoundment or immobilization must not occur concurrently with the imprisonment. However, if the first-time offender's BAC is 0.15 or higher, or if a passenger under eighteen years of age is present in the vehicle, the penalty is enhanced to a fine ranging from \$1,000 to \$2,000, imprisonment for up to nine months, and mandatory IID installation upon all vehicles leased or owned and routinely operated by the person for at least six continuous months, provided the offender qualifies for a permanent or restricted license.

A second DUI conviction carries a fine ranging from \$1,000 to \$2,000, imprisonment for a period of up to nine months, and mandatory IID installation upon all vehicles leased or owned and routinely operated by the offender for at least one year, provided the offender qualifies for a permanent or restricted license. However, if a second offense occurs within five years of a previous DUI conviction, there is a mandatory imprisonment period of at least ten days, of which at least forty-eight hours must be consecutive. As a condition of probation (second conviction within five years of a previous conviction), the offender's vehicle is impounded for thirty days, which may not occur concurrently with the imprisonment. The court must also suspend the offender's license for at least five years. Enhanced penalties also apply when the second-time offender's BAC is 0.15 or higher, or when a passenger under the age of eighteen is present in the vehicle. These enhanced penalties require a fine ranging from \$2,000 to \$4,000, imprisonment not exceeding one year, and mandatory IID installation upon all vehicles leased or owned and routinely operated by the person for at least two continuous years, provided the offender qualifies for a permanent or restricted license.

A third DUI conviction occurring within ten years after a prior DUI conviction is considered a third degree felony and carries a fine of up to \$5,000, a term of imprisonment not to exceed five years, and mandatory IID installation upon all vehicles leased or owned and routinely operated by the person for a period of not less than two years, provided the offender qualifies for a permanent or restricted license. There is also a thirty day minimum mandatory imprisonment period, of which at least forty-eight hours must be consecutive. The court must also suspend the licensee's license for at least ten years. However, a third conviction occurring more than ten years after the date of a prior DUI conviction carries a fine ranging from \$2,000 to \$5,000, possible imprisonment for up to one year, and mandatory IID installation upon all vehicles leased or owned and routinely operated by the person for at least two years, provided the offender qualifies for a permanent or restricted license.

Section 316.193(3), F.S., also provides penalties for a person convicted of a DUI who causes, or contributes to causing, damage to the property or person of another, serious bodily injury to another, or the death of another. A DUI conviction involving damage to another or to property results in a first degree misdemeanor, punishable by a fine not exceeding \$1,000, and imprisonment for up to one year. A DUI offense involving serious injury results in a third degree felony, punishable by a fine not exceeding \$5,000, and imprisonment for up to five years. A DUI conviction resulting in death is a second degree felony, punishable by a fine of up to \$10,000, and imprisonment for up to fifteen years. If, however, the offender knew (or should have known), at the time of the crash, that the crash occurred and the offender failed to give information and render aid, the offender commits a first degree felony. In these instances, the offender is subject to a fine of up to \$10,000, and imprisonment for up to thirty years.

Offense	Criminal Penalties
<p style="text-align: center;">1st Offense</p> <p>Enhanced penalties if BAC \geq 0.15; Or if passenger is < 18 yrs.</p>	<ul style="list-style-type: none"> • Fine between \$500 and \$1000 • Up to 6 months in jail • License suspension for 6 months to 1 year • Monthly reporting requirement that includes DUI school • 50 hours community service • Probation up to 1 year • Impoundment or immobilization for 10 days as a condition of probation (must not occur concurrently with jail time)
<p style="text-align: center;">2nd Offense</p> <p>Enhanced penalties if BAC \geq 0.15; Or if passenger is < 18 yrs.</p>	<ul style="list-style-type: none"> • Fine between \$1000 to \$2000 • Up to 9 months in jail (10 days minimum if 2nd offense within 5 years) • License Suspension for 6 months to 1 year (5 years if 2nd offense within 5 years) • Monthly reporting requirement that includes DUI school • Impoundment or immobilization up to 30 days as a condition of probation • Mandatory IID installation for at least 1 year (At least 2 continuous years if 2nd offense within 5 years)*
<p style="text-align: center;">3rd Offense (within 10 years after a prior conviction)</p>	<ul style="list-style-type: none"> • Fine up to \$5000 • 30 days (48 hours must be consecutive) to 5 years in prison (3rd degree felony) • Monthly reporting requirement that includes DUI school • License suspension for at least 10 years • Mandatory IID installation for at least 2 continuous years*

*When the offender qualifies for a permanent or restricted driver's license

Administrative License Suspension

Because of Florida's "Implied Consent Law,"⁸ there are also administrative penalties imposed as a result of a licensee's refusal to submit to an approved chemical test or physical test to determine the licensee's BAC. Section 316.1932, F.S., provides that the chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe the licensee was driving or was in actual physical control of a motor vehicle while under the influence. The administrative penalties for a refusal to submit to an approved chemical test or physical test are the following:

- one year for a first refusal; and
- eighteen months for a second or subsequent refusal.

⁸ s. 316.1932, F.S.

Ignition Interlock Devices (“IIDs”)

IID’s attempt to separate drinking drivers from their vehicles by attaching to the vehicle’s ignition and preventing the vehicle from starting when the driver’s BAC registers above a specified level (0.05 by statute; or as otherwise set by the court).⁹ When attempting to start the vehicle, the driver must blow into a breathalyzer tube and if the IID detects BAC above the pre-set level, the vehicle won’t start.¹⁰ Today’s IIDs also give warnings (to allow drivers the opportunity to pull over safely) of up-coming, randomized (or fixed-interval) tests while the vehicle is being operated. The purpose of these randomized (or fixed-interval) tests is to ensure that the driver does not begin drinking while driving after starting the vehicle or begin drinking elsewhere, such as at a bar or restaurant, while leaving the vehicle running. If BAC above the pre-set level is detected during a randomized test while the vehicle is running, the IID will not disable or cut-off the engine. Instead, the IID will record the violation as it records all activity. This includes all breath test results and attempts to frustrate or tamper with the IID. When violations occur, the IID must be checked and reset by the IID servicer and the record will be sent to the proper authorities.

IID Use in Florida

Section 316.1937, F.S., authorizes the court to require the installation of a certified¹¹ IID for at least six continuous months (with exceptions provided for those required to drive within the scope of employment). This authorization is in addition to any other authorized penalties – including the current mandatory installation of an IID for second and third-time offenders.¹² Although the offending driver pays for installation, maintenance and monitoring of the IID, Florida law contains provisions for those the court determines are unable to pay. For example, the court may order that any portion of a fine paid by the person for a DUI violation be allocated to defray installation costs. Currently, DHSMV receives \$12 per IID installation.

With regard to frustrating the IID device, s. 316.1937, F.S., prohibits the following acts:

- tampering with or circumventing the operation of an IID;
- requesting or soliciting another person to blow into the IID for the purpose of starting or operating the motor vehicle;
- blowing into an IID for the purpose of starting or operating the motor vehicle for another; and
- knowingly leasing or lending a motor vehicle to a person who has been required to have an IID installed on his or her motor vehicle.

A violation of s. 316.1937, F.S., carries a one year license suspension. A separate violation of s. 316.1937, F.S., during the same period of IID installation carries a five year license suspension. If a person commits any of the prohibited acts specified above and is not a licensed driver, he or she will be subject to a fine between \$250 and \$500 for each violation.

As of January 1, 2012, sixteen states require mandatory IID installation for drivers caught with BAC above the legal limit, even for first-time offenders.¹³ New Mexico was the first state and since 2005, when its IID law went into effect, it has seen a 28 percent decline in alcohol-related fatalities.¹⁴

⁹ Jeanne Mejeur. “Ignition Interlocks: Turn the Key and Blow – Can Technology Stop Drunk Driving?” Jeanne Mejeur is the National Conference of State Legislatures’ expert on drunken driving laws. This article may be viewed at <http://www.ncsl.org/IssuesResearch/Transportation35/AlcoholImpairedDrunkDriving/tabid/24003/Default.aspx?TabId=24003> (Last viewed 1/11/2012).

¹⁰ *Id.*

¹¹ Pursuant to s. 316.1938, F.S., the Florida Department of Highway Safety and Motor Vehicles is required to certify, or cause to be certified, the accuracy and precision of the breath-testing component of ignition interlock devices.

¹² s. 316.193(2)(a)3., (2)(b)1. and (2)(b)(2), F.S., require mandatory placement of an ignition interlock device on all vehicles individually or jointly leased or owned and routinely operated by the convicted person.

¹³ See information on ignition interlock devices on Mother’s Against Drunk Driving’s website at <http://www.madd.org/laws/ignition-interlock.html> (Last viewed 1/25/2012).

Mandatory with .08 Conviction	Mandatory with a BAC of at least .15 - .18	Mandatory with 2nd Conviction	Discretionary
Alaska (01/2009)	Alabama (09/2011)	Georgia ****	Idaho
Arizona (09/2007)	Delaware (07/2009)	Massachusetts	Indiana
Arkansas (04/2009)	Florida (10/2008)	Missouri	Iowa
California (pilot program) (07/2010)**	Maryland (10/2011)	Montana	Kentucky
Colorado (01/2009)*	Michigan (10/2010)	Pennsylvania	Maine
Connecticut (01/2012)	Minnesota (07/2011)*	South Carolina	Mississippi
Hawaii (01/2011)	New Hampshire		Nevada (.18)
Illinois (01/2009)*	New Jersey (01/2010)		North Dakota
Kansas (07/2011)	North Carolina (12/2007)		Ohio
Louisiana (07/2007)	Oklahoma (11/2009)		Rhode Island
Nebraska (01/2009)	Tennessee (01/2011)		South Dakota
New Mexico (06/2005)	Texas (09/2005)***		Vermont
New York (08/2010)	Virginia (10/2004)		
Oregon (01/2008)***	West Virginia (07/2008)		
Utah (07/2009)	Wisconsin (07/2010)		
Washington (01/2009)	Wyoming (07/2009)		

*Interlocks are highly incentivized in that, if the offender chooses not to use the device, he or she has a 1 year license suspension and any violation is a felony.

**California's pilot program covers the counties of Los Angeles, Alameda, Sacramento, and Tulare. These counties combined have a population of over 14 million.

***Mandatory upon license reinstatement

****Mandatory as a condition of probation

Impoundment and/or Immobilization

Current Florida law requires the court to order, as a condition of probation and at the time of sentencing, the impoundment or immobilization of the vehicle that was operated by, or in the actual control of the offender, or any one vehicle registered in the offender's name at the time of impoundment or immobilization, for a period of ten days. The impoundment or immobilization must not occur concurrently with incarceration of the offender. Impoundment or immobilization orders may be dismissed under the following circumstances:

- the order of impoundment or immobilization pertains to a vehicle that was reported stolen (owner must show police report);
- documentation is shown that the vehicle referenced in the order of impoundment or immobilization was purchased from an entity other than the offender (or the offender's agent) after the offense was committed – and the sale was not made to circumvent the order and allow the offender to drive;
- if the court finds that the offender owner's family has no other private or public means of transportation; or
- if the vehicle is owned by the offender, but operated solely by the offender's employees or business.

Effect of Proposed Changes

The bill widens a criminal court's discretion in ordering probation for convictions for driving under the influence ("DUI"). Specifically, the bill gives a criminal court the choice of ordering, at the time of sentencing, either of the following as a condition of probation:

- the impoundment or immobilization of the vehicle that was operated by, or was in the actual control of, the offender or any vehicle registered in the offender's name at the time of impoundment or immobilization; or
- the installation of an IID on all vehicles that are individually or jointly leased or owned and routinely operated by the offender.

If the court elects to order the IID installation, the period of installation will vary depending on the offender's previous convictions. The bill sets the following installation periods:

- at least three continuous months for the first conviction;
- at least six continuous months for a second conviction (within 5 years); or
- at least one year for a third or subsequent conviction (within 10 years after a prior conviction).

For first-time offenders, the effect of the proposed change will provide the court more latitude in ordering probation by giving the court the opportunity to choose either impoundment or immobilization, or IID installation. Of the 62,275 persons arrested annually for DUI in Florida, 48,135 (78%) are first-time offenders. Assuming the court elects IID installation in lieu of impoundment or immobilization, a first-time offender will be able to drive legally after the offender has served any time of imprisonment ordered by the court, if any is ordered at all, provided the offender complies with IID installation requirements for at least three continuous months.

The bill also provides the court more latitude in ordering probation for second and third-time offenders. Because second and third-time offenders are already subject to mandatory IID installation, at least one year and at least two continuous years respectively, the bill's proposed changes will extend the minimum IID installation period for this class of offenders. Assuming the court orders IID installation in lieu of impoundment or immobilization, second-time offenders (within five years) will now be required to comply with IID installation requirements for eighteen months, while third-time offenders (within ten years of a prior conviction) will be required to comply with IID installation requirements for three years (at least two continuous years).

Effective Date

The bill has an effective date of July 1, 2012.

B. SECTION DIRECTORY:

- Section 1: widens a criminal court's discretion in ordering probation for driving under the influence;
Section 2: provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. DHSMV will likely see an increase in the amount of fees relating to IID installation cases.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In instances where a criminal court orders IID installation as a part of probation, persons convicted of DUI will be responsible for the costs associated with the installation, maintenance and monitoring of the IID.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to require counties or cities to spend funds or take action(s) 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Transportation & Highway Safety Subcommittee adopted PCS for HB 681 favorably. This analysis is drafted to CS/HB 681.