

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 681 Interlock Ignition Devices Ordered for Probation for DUI

**SPONSOR(S):** Economic Affairs Committee, Transportation & Highway Safety Subcommittee; Baxley and others

**TIED BILLS:** None **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) Judiciary Committee	17 Y, 0 N	Smith	Havlicak
3) Economic Affairs Committee	17 Y, 0 N, As CS	Kiner	Tinker

### SUMMARY ANALYSIS

The bill provides that the act may be cited as the "Matthew William Beard and Grace Redgate Act." The bill broadens a criminal court's discretion when ordering the terms of probation for the offense of 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 one 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 for at least 3 continuous months.

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

##### **Alcohol-Impaired Driving Statistics**

Highway deaths fell in 2010 to their lowest level since 1949,<sup>1</sup> despite the fact that American drivers traveled nearly 46 billion more miles in 2010 than in 2009.<sup>2</sup> However, alcohol-impaired driving remains a serious concern. According to the National Conference of State Legislatures, there were 10,228 alcohol-impaired traffic fatalities in 2010.<sup>3</sup> This figure represents 31% of all motor vehicle fatalities.<sup>4</sup> According to the American Automobile Association (“AAA”), alcohol is a factor in about 40% of traffic fatalities each year, and nearly 1.5 million people are arrested annually for driving under the influence of alcohol or drugs.<sup>5</sup> 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.<sup>6</sup>

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

##### **Federal DUI Law**

Title 23 U.S.C., s. 164, and its implementing regulations, 23 C.F.R., Part 1275, set minimum penalties for repeat DUI offenders. These regulations include requirements that an individual convicted of a second or subsequent DUI offense be subject to either a “hard” license suspension<sup>8</sup> for at least 1 year, or a “hard” license suspension for at least 45 days followed by a reinstatement of restricted driving privileges for the remainder of the 1 year suspension period. The restricted driving privileges must occur concurrently with IID installation, and the privileges must be restricted to driving to and from work, school, or an alcohol treatment program.<sup>9</sup>

Additionally, each motor vehicle owned, operated (or both) by the offender must be impounded or immobilized, or installed with an IID.<sup>10</sup>

##### **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 is in actual physical control of a vehicle, and either:

- is under the influence of alcoholic beverages, or chemical substance,<sup>11</sup> or any controlled substance<sup>12</sup> to the extent the person’s normal faculties are impaired; or

<sup>1</sup> See the American Association of State Highway and Transportation Officials (“AASHTO”) press release on “NHTSA Updates 2010 Death Count; Releases Distracted Driving Survey.” Available at <http://www.aashtojournal.org/Pages/120911deaths.aspx> (last visited Feb. 17, 2012).

<sup>2</sup> 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.” Available at <http://www.dot.gov/affairs/2011/nhtsa2111.html> (last visited Feb. 17, 2012).

<sup>3</sup> See the National Conference of State Legislatures website at <http://www.ncsl.org> (search “Alcohol Impaired/Drunk Driving” (last visited Feb. 17, 2012)).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See Taylor, Dexter; Miller, Ted; and Cox, Kenya, “*Impaired Driving in the United States Cost Fact Sheets.*” Washington, DC: National Highway Traffic Safety Administration, 2002. Available at [http://www.nhtsa.gov/people/injury/alcohol/impaired\\_driving\\_pg2/US.htm](http://www.nhtsa.gov/people/injury/alcohol/impaired_driving_pg2/US.htm) (last visited Feb. 17, 2012).

<sup>7</sup> 2012 DHSMV Agency Analysis for HB 681.

<sup>8</sup> A “license suspension” means the suspension of all driving privileges. See 23 U.S.C.A. s. 164(a)(3).

<sup>9</sup> 23 U.S.C.A., s. 164(a)(5)A.

<sup>10</sup> 23 U.S.C.A., s. 164(a)(5)B.

- has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.<sup>13</sup>

### Criminal Penalties

Criminal penalties vary depending on the number of previous convictions, how much time has passed between convictions, the offender's breath-alcohol content or blood-alcohol content ("BAC") when arrested, and the age of any passengers in the vehicle at the time of arrest.

*First-Time Offender.* A first-time offender is subject to a fine ranging from \$500 to \$1,000, as well as imprisonment for up to 6 months and a driver's license suspension of 6 months to 1 year.<sup>14</sup> The offender must also be placed on probation for up to 1 year and participate in 50 hours of community service. As a condition of probation, the offender's vehicle is impounded or immobilized for a period of 10 days (or the unexpired term of any lease or rental agreement that expires within 10 days) and the impoundment or immobilization must not occur concurrently with the imprisonment.<sup>15</sup>

However, if the first-time offender's BAC is 0.15 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 \$1,000 to \$2,000, imprisonment for up to 9 months, and mandatory IID installation upon all vehicles leased or owned and routinely operated by the person for at least 6 continuous months (provided the offender qualifies for a permanent or restricted license).<sup>16</sup>

*Second-Time Offender.* A second DUI conviction carries a fine ranging from \$1,000 to \$2,000, imprisonment for a period of up to 9 months, and mandatory IID installation upon all vehicles leased or owned and routinely operated by the offender for at least 1 year, provided the offender qualifies for a permanent or restricted license.<sup>17</sup>

However, if a second offense occurs within 5 years of a previous DUI conviction, there is a mandatory imprisonment period of at least 10 days, of which at least 48 hours must be consecutive. Additionally, as a condition of probation, the offender's vehicle is impounded for 30 days, which may not occur concurrently with the imprisonment.<sup>18</sup> The court must also suspend the offender's license for at least 5 years.<sup>19</sup>

Enhanced penalties also apply when the second-time offender's BAC is 0.15 or higher, or when a passenger under the age of 18 is present in the vehicle. These enhanced penalties require a fine ranging from \$2,000 to \$4,000, imprisonment not exceeding 1 year,<sup>20</sup> and mandatory IID installation upon all vehicles leased or owned and routinely operated by the person for at least 2 continuous years, provided the offender qualifies for a permanent or restricted license.<sup>21</sup>

*Third-Time and Subsequent Offender.* A third DUI conviction occurring more than 10 years after the date of a prior DUI conviction carries a fine ranging from \$2,000 to \$5,000, imprisonment for no more than 1 year, and mandatory IID installation upon all vehicles leased or owned and routinely operated by the person for at least 2 years (provided the offender qualifies for a permanent or restricted license).<sup>22</sup>

A third DUI conviction occurring within 10 years of a prior DUI conviction is a third degree felony.<sup>23</sup> The offense also requires IID installation upon all vehicles leased or owned and routinely operated by the

<sup>11</sup> s. 877.111, F.S.

<sup>12</sup> ch. 893, F.S.

<sup>13</sup> s. 316.193(1), F.S.

<sup>14</sup> s. 316.193(2), F.S.

<sup>15</sup> s. 316.193(6)(a), F.S.

<sup>16</sup> s. 316.193(4), F.S.

<sup>17</sup> s. 316.193(2), F.S.

<sup>18</sup> s. 316.193(6)(b), F.S.

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

<sup>20</sup> s. 316.193(4), F.S.

<sup>21</sup> s. 316.193(4)(c), F.S.

<sup>22</sup> s. 316.193(2)(b)2, F.S.

<sup>23</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine per ss. 775.082 and 775.083, F.S.

offender for a period of not less than 2 years (provided the offender qualifies for a permanent or restricted license).<sup>24</sup> Additionally, there is a 30-day minimum imprisonment period, of which at least 48 hours must be consecutive.<sup>25</sup> Finally, the court must also suspend the offender's license for at least 10 years.<sup>26</sup>

If the offender's BAC is 0.15 or higher, or if a passenger under the age of 18 is present in the vehicle at the time of the offense, the penalty increases to at least \$4,000.<sup>27</sup>

A fourth or subsequent conviction, regardless of when it occurs, is a third degree felony, punishable by up to 5 years in prison and a fine of not less than \$1,000 or more than \$5,000.<sup>28</sup> If the fourth or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.<sup>29</sup>

*Property Damage or Injury.* Section 316.193(3), F.S., provides penalties for a person convicted of 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 is a first degree misdemeanor.<sup>30</sup> A DUI offense involving serious injury results in a third degree felony.<sup>31</sup> A DUI conviction resulting in death is a second degree felony.<sup>32</sup> 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.<sup>33</sup>

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

<sup>25</sup> s. 316.193(6)(c), F.S.

<sup>26</sup> s. 322.28(2)(a)3, F.S.

<sup>27</sup> s. 316.193(4)(a)3, F.S.

<sup>28</sup> s. 316.193(2)(b)3, F.S.

<sup>29</sup> s. 316.193(6)(c), F.S.

<sup>30</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine per ss. 775.082 and 775.083, F.S.

<sup>31</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine per ss. 775.082 and 775.083, F.S.

<sup>32</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine per ss. 775.082 and 775.083, F.S.

<sup>33</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine per ss. 775.082 and 775.083, F.S.

The following chart summarizes DUI criminal penalties:

Offense #	Criminal Penalties
1 <sup>st</sup>	<ul style="list-style-type: none"> <li>• <b>Fine:</b> \$500 - \$1000</li> <li>• <b>Imprisonment:</b> Up to 6 mo</li> <li>• <b>Probation:</b> Up to 1 yr</li> <li>• <b>License suspension:</b> 6 mo - 1 yr</li> <li>• <b>Monthly reporting requirement</b>, including DUI school</li> <li>• <b>Community service:</b> 50 hrs</li> <li>• <b>Impoundment or immobilization:</b> 10 days, as a condition of probation (must not occur concurrently with jail time)</li> </ul> <p>Enhanced penalties if BAC <math>\geq</math> 0.15, or if passenger is a minor:</p> <ul style="list-style-type: none"> <li>• <b>Fine:</b> \$1000 - \$2000</li> <li>• <b>Imprisonment:</b> Up to 9 mo</li> <li>• <b>IID:</b> At least 6 continuous months</li> </ul>
2 <sup>nd</sup>	<p>If <i>more</i> than 5 yrs since a prior conviction:</p> <ul style="list-style-type: none"> <li>• <b>Fine:</b> \$1,000 - \$2,000</li> <li>• <b>Imprisonment:</b> Up to 9 mo</li> <li>• <b>License Suspension:</b> 6 mo - 1 yr</li> <li>• <b>Monthly reporting requirement</b>, including DUI school</li> <li>• <b>IID:</b> Mandatory for at least 1 yr</li> </ul> <p>Enhanced penalties if <i>less</i> than 5 yrs since a prior conviction:</p> <ul style="list-style-type: none"> <li>• <b>Imprisonment:</b> 10 day minimum (48 hrs consecutive)</li> <li>• <b>License suspension:</b> 5 yrs</li> <li>• <b>Impoundment or Immobilization:</b> 30 days</li> </ul> <p>Enhanced penalties if BAC <math>\geq</math> 0.15, or if passenger is a minor:</p> <ul style="list-style-type: none"> <li>• <b>Fine:</b> \$2,000 - \$4,000</li> <li>• <b>Imprisonment:</b> Up to 1 yr</li> <li>• <b>IID:</b> At least 2 continuous yrs</li> </ul>
3 <sup>rd</sup>	<p>If <i>more</i> than 10 yrs since a prior conviction:</p> <ul style="list-style-type: none"> <li>• <b>Fine:</b> \$2,000 - \$5,000</li> <li>• <b>Imprisonment:</b> 12 mo maximum</li> <li>• <b>IID:</b> Mandatory, at least 2 continuous yrs</li> <li>• <b>Monthly reporting requirement</b>, including DUI school</li> </ul> <p>If <i>less</i> than 10 yrs since a prior conviction:</p> <ul style="list-style-type: none"> <li>• <b>3<sup>rd</sup> degree felony</b></li> <li>• <b>Fine:</b> Up to \$5,000</li> <li>• <b>Imprisonment:</b> 30 days minimum, 5 yrs maximum (48 hrs consecutive)</li> <li>• <b>IID:</b> Mandatory, at least 2 continuous yrs</li> <li>• <b>Monthly reporting requirement</b>, including DUI school</li> <li>• <b>License suspension:</b> At least 10 yrs</li> <li>• <b>Impoundment or Immobilization:</b> 90 days, as a condition of probation (must not occur concurrently with jail time)</li> </ul> <p>Enhanced penalties if BAC <math>\geq</math> 0.15, or if passenger is a minor:</p> <ul style="list-style-type: none"> <li>• <b>Fine:</b> At least \$4,000 (3<sup>rd</sup> or subsequent offense)</li> </ul>

## Administrative License Suspension

Under Florida's "Implied Consent Law,"<sup>34</sup> there are also administrative penalties imposed as a result of a person's refusal to submit to an approved chemical or physical breath test to determine the person'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 person was driving or was in actual physical control of a motor vehicle while under the influence. When an officer requests the breath, urine or blood test, the offender must be told that:

- Refusal to submit to the test will result in the suspension of the offender's driving privilege for 1 year.
- Refusal to submit to the test will result in the suspension of the offender's driving privilege for 18 months if the offenders driving privilege has previously been suspended for a refusal to submit.
- Refusal to submit to test is a misdemeanor if the offender's driving privilege has previously been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood.<sup>35</sup>

## **Ignition Interlock Devices ("IIDs")**

The purpose of an IID is to prevent individuals who have been drinking alcohol from operating their vehicles. Before starting a vehicle with an IID installed, the driver must blow into a breathalyzer tube. If the IID detects a BAC above the pre-set level<sup>36</sup> it will prevent the vehicle from starting. Additionally, modern IIDs conduct randomized tests while the vehicle is being operated in order to help ensure that the driver did not use another person's breath sample to start the car, or did not begin drinking after starting the vehicle (for example, by drinking in a bar while leaving the vehicle running).<sup>37</sup> If the IID detects BAC above the pre-set level during one of these tests, the IID will not stop or disable the engine, but will record the violation. When violations occur, the IID must be checked and reset by the IID servicer and the record will be sent to the proper authorities.<sup>38</sup>

### IID Use in Florida

The following table summarizes the IID requirements under s. 316.193, F.S.:

<b>DUI Conviction</b>	<b>Ignition Interlock Requirement</b>
1 <sup>st</sup> Conviction	If court ordered
1 <sup>st</sup> Conviction if 0.15 or above, or minor in car	At least 6 months
2 <sup>nd</sup> Conviction	At least 1 year
2 <sup>nd</sup> Conviction if 0.15 or above, or minor in car	At least 2 years
3 <sup>rd</sup> Conviction	At least 2 years
4 <sup>th</sup> + Convictions (Condition of Hardship License)	At least 5 years <sup>39</sup>

Additionally, s. 316.1937, F.S., authorizes the court to require the installation of a certified<sup>40</sup> IID for at least 6 continuous months.<sup>41</sup> This authorization is in addition to any other authorized penalties, including the current mandatory installation of an IID for second and third-time offenders.<sup>42</sup>

<sup>34</sup> s. 316.1932, F.S.

<sup>35</sup> *Id.*

<sup>36</sup> 0.05 by statute, or as otherwise set by the court.

<sup>37</sup> IIDs that conduct these randomized tests provide warnings of upcoming tests in order to allow drivers the opportunity to pull over safely.

<sup>38</sup> Jeanne Mejeur, "Ignition Interlocks: Turn the Key and Blow – Can Technology Stop Drunk Driving?" (Dec. 2007). Available at <http://www.ncsl.org> (search "Alcohol Impaired/Drunk Driving," then click link for article (last visited Feb. 17, 2012)).

<sup>39</sup> See FDHSMV's website at <http://www.flhsmv.gov/ddl/iid.html> (last visited Feb. 17, 2012).

The offending driver pays for the installation, maintenance, and monitoring of the IID. However, 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 as a result of a DUI offense be counted against installation costs.<sup>43</sup> The cost (plus tax) to the convicted person for an ignition interlock device is:

- \$12 Interlock fee;
- \$70 for installation;
- \$67.50 for monthly monitoring and calibration; and
- \$100 refundable deposit or a \$5 monthly insurance charge.<sup>44</sup>

With regard to attempts to circumvent the IID, 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.<sup>45</sup>

A violation of s. 316.1937, F.S., carries a 1 year license suspension. A separate violation of s. 316.1937, F.S., during the same period of IID installation carries a 5 year license suspension.<sup>46</sup> 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.<sup>47</sup>

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<sup>40</sup> Pursuant to s. 316.1938, F.S., the FDHSMV is required to certify, or cause to be certified, the accuracy and precision of the breath-testing component of IIDs.

<sup>41</sup> With exceptions provided for those required to drive within the scope of employment.

<sup>42</sup> Sections 316.193(2)(a)3, 316.193(2)(b)1, and 316.193(2)(b)2, F.S., require mandatory placement of an IID on all vehicles individually or jointly leased or owned and routinely operated by the convicted person.

<sup>43</sup> s. 316.1937(2)(d), F.S.

<sup>44</sup> See FDHSMV's website at <http://www.flhsmv.gov/ddl/iid.html> (Last visited Feb. 17, 2012).

<sup>45</sup> s. 316.1937(6), F.S.

<sup>46</sup> s. 316.1937(5)(a), F.S.

<sup>47</sup> s. 316.1937(5)(b), F.S.

## IID Use Nationwide

As of January 1, 2012, 16 states require mandatory IID installation for drivers caught with BAC above the legal limit, even for first-time offenders.<sup>48</sup> In 2005, New Mexico became the first state to adopt such requirements, and since then the state has seen a 28 percent decline in alcohol-related fatalities.<sup>49</sup>

### Information courtesy of “Mothers Against Drunk Driving”

<b>Mandatory with .08 Conviction</b>	<b>Mandatory with a BAC of at least .15 - .18</b>	<b>Mandatory with 2<sup>nd</sup> Conviction</b>	<b>Discretionary</b>
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)		

\*There is a strong incentive to use an IID- if the offender chooses not to use an IID, his or her license is suspended for one year, and any violation of the suspension is a felony.

\*\*California’s pilot program includes 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 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 10 days.<sup>50</sup> The impoundment or immobilization must not occur concurrently with incarceration of the offender.<sup>51</sup> Impoundment or immobilization orders may be dismissed under the following circumstances:

<sup>48</sup> See information on ignition interlock devices on Mothers Against Drunk Driving’s website at <http://www.madd.org/laws/ignition-interlock.html> (last visited Feb. 17, 2012).

<sup>49</sup> Jeanne Mejeur, “Ignition Interlocks: Turn the Key and Blow – Can Technology Stop Drunk Driving?” (Dec. 2007). Available at <http://www.ncsl.org> (search “Alcohol Impaired/Drunk Driving,” then click link for article (last visited Feb. 17, 2012)).

<sup>50</sup> s. 316.193(6), F.S.

<sup>51</sup> *Id.*



- 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.<sup>52</sup>

Within 7 business days after the date that the court issues the order of impoundment or immobilization, the clerk must send notice by certified mail, return receipt requested, to the registered owner of each vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.<sup>53</sup> Section 316.193(6)(e)-(g), F.S., provide certain remedial procedures for a person who owns, but was not operating, the vehicle when the offense occurred.

### **Effect of Proposed Changes**

The bill contains a short title stating that the act may be cited as the "Matthew William Beard and Grace Redgate Act."

The bill expands a criminal court's discretion when ordering the terms of probation for the offense of driving under the influence ("DUI"). Specifically, the bill gives a criminal court the choice of ordering, at the time of sentencing,<sup>54</sup> 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 one vehicle registered in the offender's name at the time of impoundment or immobilization; or
- the installation of an IID<sup>55</sup> on all vehicles that are individually or jointly leased or owned and routinely operated by the offender for a period of at least 3 continuous months.

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 impoundment /immobilization, or IID installation.<sup>56</sup> Assuming the court orders IID installation instead of impoundment or immobilization, a first-time offender will be able to drive legally after the offender has served any term of imprisonment ordered by the court, provided the offender complies with IID installation requirements for at least 3 continuous months.

The bill also makes non-substantive technical changes to the language of s. 316.193, F.S.

### *Effective Date*

The bill has an effective date July 1, 2012.

## **B. SECTION DIRECTORY:**

**Section 1.** Cites the act as the "Matthew William Beard and Grace Redgate Act."

**Section 2.** Amends s. 316.193, F.S., relating to penalties for driving under the influence.

**Section 3.** Provides that the act shall take effect July 1, 2012.

<sup>52</sup> Section 316.193(6), F.S.

<sup>53</sup> Section 316.193(6)(d), F.S.

<sup>54</sup> The bill amends s. 316.193(6)(d), F.S., to require the court to issue the order for immobilization or installation of an IID at the time of sentencing.

<sup>55</sup> In accordance with s. 316.1938, F.S.

<sup>56</sup> Of the 62,275 persons arrested annually for DUI in Florida, 78% are first-time offenders. See DHSMV Agency Analysis of HB 681 at p. 9.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill has an indeterminate fiscal impact on state government revenues. 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:

The bill does not appear to have any impact on local government revenues.

#### 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:

The provisions of the bill addressing criminal provisions appear 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### 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.

On February 22, 2012, the Economic Affairs Committee adopted two amendments to CS/HB 681. The first amendment named the act, the "Matthew William Beard and Grace Redgate Act." The second amendment provided that the installation of an IID device in lieu of immobilization or impoundment as part of probation for DUI shall only be available for first-time offenders. The second amendment also removed the provision altering the number of an offender's vehicles that will be impounded or immobilized if the court does not elect to order IID installation for a first-time offender. The bill

previously proposed to change current law to require that, in this instance, “any” of the offender’s vehicles would be impounded or immobilized. The amendment left this provision as it is in current law, which is that only one of the offender’s vehicles will be impounded or immobilized.

This analysis is drafted to CS/CS/HB 681.