

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 864

INTRODUCER: Senator Altman

SUBJECT: Driving Under the Influence

DATE: February 2, 2012

REVISED: 02/08/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

Ignition Interlock Devices

This bill amends s. 316.193(6), F. S., to allow the court to order the installation of an ignition interlock device in lieu of ordering the impoundment or immobilization of the vehicle that was operated by or in the actual control of a defendant convicted of driving under the influence of alcohol or drugs to the extent normal faculties are impaired (DUI).

If the court elects to order an ignition interlock device installation, the installation time requirements will vary depending on the offender's previous DUI convictions. The bill provides the following installation time periods:

- at least three continuous months for a first DUI conviction;
- at least six continuous months for a second DUI conviction occurring within five years after the date of a prior DUI conviction; or
- at least twelve continuous months for a third or subsequent DUI conviction occurring within ten years after the date of a prior DUI conviction.

Administrative Suspension

This bill also amends several sections of law relating to DUI suspensions, administered by the Department of Highway Safety and Motor Vehicles (DHSMV). With respect to roadside DUI license suspensions, the bill requires a law enforcement officer to issue a notice to appear in addition to a notice of suspension. The notice to appear requires a driver to personally appear at a designated office of the DHSMV. The bill provides that if the driver waives his or her right to a formal review of the DUI suspension, the DHSMV shall reinstate the person's driving privilege

(although the license is still restricted), and shall waive the suspension requirement contained in current law. A driver will still be able to request an informal review in addition to obtaining a restricted license. The DHSMV is authorized to extend the time for a person to apply for a restricted license under certain circumstances and must notify drivers who fail to appear in writing to alert them to their right to review the suspension.

Under the bill, a driver who appears at a DHSMV office and does not apply for a restricted license retains his or her right to a formal review, as is the case under current law. The bill authorizes a hearing officer to receive testimony for a review telephonically and authorizes law enforcement agencies to submit materials related to the arrest to the DHSMV by electronic format.

The bill provides that, if a subpoenaed person does not appear at a formal hearing, the party seeking enforcement of such subpoena may do so by filing a motion for enforcement in the criminal court case (if any) resulting from the incident that gave rise to the suspension. The bill provides that the DHSMV is not a party to the subpoena action. The bill prohibits a hearing officer from considering the lawfulness of the arrest during a formal review, and authorizes witnesses to appear telephonically at a formal review hearing. With respect to telephonic hearings, the bill requires a law enforcement agency seeking certiorari review to file the petition in the circuit court in the county where the law enforcement agency is located.

The bill also clarifies commercial driver license disqualifications, convictions, administrative suspensions and hardship licenses, and it changes eligibility periods and ignition interlock device requirements for a hardship license.

This bill substantially amends the following sections of the Florida Statutes: 316.193, 322.2615, 322.2616, 322.2715, and 322.64.

II. Present Situation:

Ignition Interlock Devices/Impoundment or Immobilization

Section 316.193(2), F.S., requires a judge to order the installation of an ignition interlock device on all vehicles leased or owned and routinely operated by a second-time DUI offender for at least one year, provided the offender qualifies for a permanent or restricted license. A third conviction requires mandatory ignition interlock device installation on all vehicles leased or owned and routinely operated by the offender for at least two years, provided the offender qualifies for a permanent or restricted license.

However, if a 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 mandatory ignition interlock installation on all vehicles leased or owned and routinely operated by the offender is for at least six continuous months, provided the offender qualifies for a permanent or restricted license. If a second-time offender's BAC is 0.15 or higher or if a passenger under the age of eighteen is present in the vehicle, the mandatory ignition interlock device installation on all vehicles leased or owned and routinely operated by the offender is for at least two continuous years, provided the offender qualifies for a permanent or restricted license.

Section 316.1937, F.S., authorizes the court to require the installation of a certified ignition interlock device for at least six continuous months, with exceptions provided for those required to drive within the scope of employment.¹ This authorization is in addition to any other authorized penalties, including the current mandatory installation of an ignition interlock device for second and third-time offenders. Although a DUI offender pays for installation, maintenance and monitoring of the ignition interlock device, 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.

The following acts are prohibited under s. 316.1937, F.S.:

- tampering with or circumventing the operation of an ignition interlock device;
- requesting or soliciting another person to blow into an ignition interlock device for the purpose of starting or operating the motor vehicle;
- blowing into an ignition interlock device 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 ignition interlock device installed on his or her motor vehicle.

A violation of this section results in a one year license suspension. A separate violation of this section during the same period of ignition interlock device installation results in a five year license suspension. If a person commits any of these prohibited acts and is not a licensed driver, he or she is subject to a fine between \$250 and \$500 for each violation.

Section 316.193(6), F.S., requires a judge to order the impoundment or immobilization of a vehicle that the defendant was operating or in the actual control of at the time of a DUI arrest. The impoundment period increases with the number of DUI convictions: a first conviction requires an impoundment/immobilization for ten days, a second conviction requires impoundment/immobilization for 30 days, and a third or subsequent conviction requires impoundment/immobilization for 90 days. The impoundment must not coincide with any incarceration of the offender.

Section 322.28, F.S., provides time periods for driver license revocation upon a DUI conviction. After a first conviction, the court must revoke the offender's license for a period of six months to one year. After a second conviction within five years of a first DUI conviction, the court must revoke the offender's driver license for a period not less than five years. A third conviction within ten years after the date of a prior DUI conviction results in a revocation of not less than ten years.

Currently, s. 322.2715, F.S., does not allow the DHSMV to substitute the installation of an ignition interlock device in lieu of imposing the revocation periods set forth in s. 322.28, F.S.

¹ Section 316.1938, F.S., requires the DHSMV to certify, or cause to be certified, the accuracy and precision of the breath-testing component of ignition interlock devices.

Administrative Suspension

Sections 322.2615, 322.2616 and 322.64, F.S., specify certain administrative sanctions that are issued to a driver who refuses to take a breath, blood or urine test or who has a breath or blood alcohol level of .08 or higher.

Section 322.2615, F.S., the administrative suspension law, provides that a law enforcement officer must notify the driver at roadside of the administrative suspension of his or her driver's license as a result of a DUI arrest. The officer must issue an unrestricted ten day temporary permit (if eligible), and provide the driver with information regarding the opportunity to challenge the suspension. The driver has ten days to apply in person or by mail for the formal or informal review of their license suspension in the judicial circuit where they live or where the offense occurred. Upon application for a formal review, the driver is issued a temporary driving permit restricted to "business purposes only," which expires 12 days after the scheduled formal review.

If the suspension is upheld by the hearing officer, the driver must serve a period of 30 days during which no driving is permitted. If the offense is for a blood or breath alcohol level of .08 or higher, or refusal to take a breath, blood, or urine test, the suspension period is 90 days. A driver is not eligible to obtain a hardship license until they have served the mandatory suspension time.

If the driver does not request a review within the required ten day period from the date of arrest, the suspension is automatically sustained and the time period begins. After the expiration of the suspension time, the driver may apply for a hearing to determine if a hardship license will be issued. Under certain circumstances a review will be granted after the ten day period with an affidavit of just cause explaining why the driver did not timely apply for a review.

During a formal hearing, a hearing officer is authorized to administer oaths, examine witnesses, take testimony, receive relevant evidence, issue subpoenas and make a ruling on the suspension. As a result of the Florida Supreme Court decision in *DHSMV v. Hernandez, McLaughlin*, 36 Fla. L. Weekly S243a (Fla. June 9, 2011), the hearing officer must determine the lawfulness of the arrest for a violation of s. 316.193, F.S. If a witness is subpoenaed by the driver and fails to appear at the formal review, the driver has the option to enforce the subpoena through the circuit court to ensure the appearance of the witness.

Currently, if drivers request an informal review, they may submit materials to the DHSMV for review. The hearing officer reviews the paperwork submitted by the law enforcement agency and any of the documents submitted by the driver. No testimony is taken.

The previously discussed administrative procedures also apply to s. 322.2616, F.S., the "zero tolerance" law that governs persons under 21 years of age, and they apply to s. 322.64, F.S., relating to commercial driver license administrative disqualifications.

III. Effect of Proposed Changes:

Ignition Interlock Devices

This bill amends s. 316.193(6), F.S., to allow the court to order the installation of the ignition interlock device in lieu of ordering the impoundment or immobilization of the vehicle that was operated by or in actual control of a defendant convicted of DUI.

If the court elects to order an ignition interlock device installation, the installation time requirements will vary depending on the offender's previous convictions. The bill provides the following installation time periods:

- at least three continuous months for a first DUI conviction;
- at least six continuous months for a second DUI conviction that occurs within five years after the date of a prior DUI conviction; or
- at least twelve continuous months for a third or subsequent DUI conviction that occurs within ten years after the date of a prior DUI conviction.

So, if the court orders the installation of an ignition interlock device, it will be in addition to any penalty currently available to be imposed under s. 316.193, F.S., which has the practical effect of lengthening the minimum ignition interlock device time requirements for all second and third-time DUI offenders. For example, a second-time DUI offender under the bill will be required to comply with the currently required ignition interlock device installation of 12 months, plus the bill's new mandate of at least six months (18 months total); and a third or subsequent time DUI offender will have to comply with the currently required 24 months, plus the bill's new mandate of at least 12 months (36 months total).

Administrative Suspension

This bill also amends ss. 322.2615, 322.2616, 322.64, 322.2715, F.S, relating to DUI suspensions, administered by the DHSMV. With respect to roadside DUI license suspensions, the bill requires a law enforcement officer to issue a notice to appear in addition to a notice of suspension. The notice to appear requires a driver to personally appear at a designated office of the DHSMV. The bill provides that if the driver waives his or her right to a formal review of the DUI suspension, the DHSMV shall reinstate the person's driving privilege (although the license is still restricted), and shall waive the suspension requirement contained in current law. A driver would still be able to request an informal review in addition to obtaining a restricted license. The DHSMV is authorized to extend the time for a person to apply for a restricted license under certain circumstances and must notify drivers who fail to appear in writing to alert them to their right to review the suspension.

Under the bill, a driver who appears at a DHSMV office and does not apply for a restricted license retains his or her right to a formal review, as is the case under current law. The bill authorizes a hearing officer to receive testimony for a review telephonically and authorizes law enforcement agencies to submit materials related to the arrest to the DHSMV by electronic format.

The bill provides that, if a subpoenaed person does not appear at a formal hearing, the party seeking enforcement of such subpoena may do so by filing a motion for enforcement in the

criminal court case (if any) resulting from the incident that gave rise to the suspension. The bill provides that the DHSMV is not a party to the subpoena action. The bill prohibits a hearing officer from considering the lawfulness of the arrest during a formal review, and authorizes witnesses to appear telephonically at a formal review hearing. With respect to telephonic hearings, the bill requires a law enforcement agency seeking certiorari review to file the petition in the circuit court in the county where the law enforcement agency is located.

The bill amends s. 322.64, F.S., and removes language related to unlawful blood alcohol level and language related to ss. 322.63 and 316.1932, F.S., regarding the implied consent provisions, in response to the Florida Supreme Court case, *DHSMV v. Hernandez and McLaughlin*, 36 Fla. L. Weekly S243a (Fla. June 9, 2011).

The bill also clarifies commercial driver license disqualifications, convictions, administrative suspensions and hardship licenses, and it changes eligibility periods and ignition interlock device requirements for a hardship license.

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.

B. Private Sector Impact:

If the court elects to order the installation of an ignition interlock device, the DUI offender will be responsible for the costs associated with its installation, maintenance, and monitoring.

C. Government Sector Impact:

According to the DHSMV, if SB 864 is implemented, it will result in an increase in the number of ignition interlock device installations for second and third-time convicted DUI offenders. This analysis presumes that all offenders will elect to have the ignition

interlock device installation post conviction. Historical data shows that there are 62,275 DUI arrests annually, of which 14,140 (22%) are second or third-time offenders.²

In addition, there are currently 117,334 people with convictions whose vehicles have not yet been installed. Considering both of these groups, the bill's ignition interlock device changes are expected to increase the total ignition interlock device volume to 61,122 people on a weekly basis throughout the calendar year. This significant increase will require an additional 18 new FTEs in the DHSMV's Ignition Interlock Program to provide sufficient monitoring and case/program management.³

Using current staff distribution, the additional 18 FTEs include:

- 1 Section Supervisor;
- 10 Operations and Management Consultant IIs; and
- 7 Senior Highway Safety Specialists.

According to the DHSMV, estimated annual recurring costs for these additional FTEs and related expenses will be \$1,042,051.⁴

The DHSMV also states that if SB 864 is implemented, a reorganization of the Bureau of Administrative Reviews will occur as a result of changes in the formal review process resulting in a decrease of FTE. In addition, changes in the Bureau of Motorist Compliance will result in an increased need for FTE. The changes to the Bureau of Administrative Reviews will allow the DHSMV to reduce the size of its workforce by 44 FTEs statewide. This FTE reduction is based on an assumption that there will be a 50 percent reduction in the number of formal and informal reviews requested by drivers arrested for driving under the influence. The DHSMV expects some percentage of first-time DUI offenders to elect the new option of receiving a business-purposes-only license immediately, and waive the formal review hearing process. The bill's authorization for the DHSMV to conduct formal hearings by telephone is also a factor in the workforce reduction.⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

² DHSMV Legislative Analysis for SB 864, dated January 4, 2012, on file with the Senate Criminal Justice staff.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
