

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 432

INTRODUCER: Criminal Justice Committee and Senator Wright

SUBJECT: Driving Under the Influence

DATE: April 5, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	Fav/CS
2.			ACJ	
3.			FP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 432 amends s. 316.193, F.S., prohibiting a trial court from accepting a plea of guilty or no contest to a reduced charge, including reckless driving when a person is charged with the offense of driving under the influence unless specific conditions are met.

The bill amends s. 316.1932, F.S., requiring that a person must be notified that a first refusal to submit to a lawful breath or urine test will result in a second-degree misdemeanor and that a second or subsequent failure to submit to a breath or urine test will result in a first-degree misdemeanor.

The bill amends s. 316.1939, F.S., reclassifying a person's first failure to submit to a lawful breath or urine test as a second-degree misdemeanor. The bill provides that a second or subsequent refusal to submit to a lawful breath, urine, or blood test is a first-degree misdemeanor.

The bill creates s. 316.19395, F.S., authorizing a judicial circuit to create a Driving Under the Influence Diversion Program, requiring the policies and procedures of the program to be published on the website of a participating state attorney's office and requiring each judicial circuit operating such a program to submit participant information for persons who successfully complete the program to the Department of Highway Safety and Motor Vehicles. The bill requires the department to notate the driver record of the successful completion of the participants.

The bill provides that if, after successfully completing a diversion program, a person is charged with a new driving under the influence offense, the person may not participate in a subsequent Driving Under the Influence Diversion program.

The bill amends s. 316.656, F.S., prohibiting a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for any violation of s. 316.1939, F.S., relating to the refusal to submit to a breath test.

The bill is effective October 1, 2023.

## II. Present Situation:

### Testing for Alcohol, Chemical Substances, and Controlled Substances

#### *Implied Consent*

Section 316.1932, F.S., sets forth what is commonly known as the implied consent law. Specifically, s. 316.1932(1)(a)1., F.S., provides that anyone who operates a motor vehicle or vessel in the state is, by operating such a vehicle or vessel, deemed to have given his or her consent to submit to an approved chemical or physical test of his or her breath to determine the alcoholic content of his or her blood or breath or a urine test to detect the presence of chemical substances or controlled substances.<sup>1</sup>

The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215, F.S.,<sup>2</sup> as a result of a refusal to submit to a test or tests required under this chapter or ch. 327, F.S., and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215, F.S., for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or ch. 327, F.S., he or she commits a first-degree misdemeanor.<sup>3</sup>

These tests may be performed if the person is lawfully arrested for any offense allegedly committed while the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical, or controlled substances.<sup>4</sup>

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<sup>1</sup> Sections 316.1932 (1)(a)1.a., and 327.352(1)(a)1., F.S.

<sup>2</sup> When a person refuses to submit to a blood test, breath test, or urine test pursuant to s. 327.352, F.S., a law enforcement officer authorized to make arrests for violations of this chapter shall file with the clerk of the court, on a form provided by the commission, a certified statement that probable cause existed to arrest the person for a violation of s. 327.35, F.S., and that the person refused to submit to a test as required by s. 327.352, F.S. Along with the statement, the officer shall also submit a sworn statement on a form provided by the commission that the person has been advised of both the penalties for failure to submit to the blood, breath, or urine test and the procedure for requesting a hearing. Section 327.35215(2), F.S.

<sup>3</sup> A first-degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year and a \$1,000 fine, as provided in s. 775.082 and s. 775.083, F.S.

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

### *Driving Under the Influence*

A person is guilty of driving under the influence if a person drives or is in actual physical control of a vehicle and the person:

- Is under the influence of alcoholic beverages, any controlled substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., to the extent that the person's normal faculties are impaired;<sup>5</sup>
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood;<sup>6</sup> or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.<sup>7</sup>

The criminal penalties for driving under the influence vary depending on numerous factors such as the number of prior convictions, the length of time between convictions, and the defendant's blood alcohol level.<sup>8</sup> The penalties for a first time driving under the influence offense are punishable by:

- A period of probation not exceeding one year;
- A fine of not less than \$500 or more than \$1,000;
- Imprisonment for not more than six months;
- A mandatory 50 hours of community service; and
- A mandatory ten-day vehicle impoundment.<sup>9</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 316.193, F.S., prohibiting a trial court from accepting a plea of guilty or no contest to a reduced charge, including reckless driving when a person is charged with the offense of driving under the influence unless:

- The trial court determines there is a good faith basis to believe a reduction in such charge is warranted; or
- The defendant successfully completes a Driving Under the Influence Diversion Program in accordance with s. 316.19395, F.S.

The bill amends s. 316.1932, F.S., requiring that a person be notified that his or her first failure to submit to a lawful breath or urine test is a second-degree misdemeanor and his or her second or subsequent failure to submit to a breath or urine test is a first-degree misdemeanor. The bill requires that a person must be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of his or her license to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driver license of such person has been previously suspended or if he or she has previously been fined under s. 327.35215, F.S.

The bill amends s. 316.1939, F.S., reclassifying a person's first failure to submit to a lawful breath or urine test as a second-degree misdemeanor. The bill provides that a second or subsequent refusal to submit to a lawful breath, urine, or blood test is a first-degree misdemeanor.

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<sup>5</sup> Section 316.193(1)(a), F.S.

<sup>6</sup> Section 316.193(1)(b), F.S.

<sup>7</sup> Section 316.193(1)(c), F.S.

<sup>8</sup> Section 316.193, F.S.

<sup>9</sup> Section 316.193(2)(a), F.S.

The bill creates s. 316.19395, F.S., authorizing any judicial circuit to create a Driving Under the Influence Diversion Program. A judicial circuit that creates such a program shall publish the terms and conditions of the program on the website of the office of the state attorney. Each judicial circuit operating a Driving Under the Influence Diversion Program must report to the department persons who have successfully completed the program. The department shall notate the successful participation of the diversion program on the driving record of each person.

The bill provides that if, after successfully completing a diversion program, a person is charged with a new driving under the influence offense, the person may not participate in a subsequent Driving Under the Influence Diversion program.

The bill amends s. 316.656, F.S., prohibiting a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for any violation of s. 316.1939, F.S., relating to the refusal to submit to a breath test.

The bill is effective October 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.193, 316.1932, 316.1939, 316.19395, and 316.656.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Criminal Justice on April 4, 2023:**

The committee substitute:

- Deletes the requirement that a person who commits a new DUI offense must be charged with a second or subsequent DUI after completing a DUI diversion program.
- Prohibits a person who gets a new DUI from participating in a subsequent Driving Under the Influence Diversion Program after successfully completing a program.

B. Amendments:

None.