

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 Committee on Criminal Justice

BILL: SB 138

INTRODUCER: Senator Wright

SUBJECT: Driving Under the Influence

DATE: February 10, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 138 makes multiple changes to strengthen and enhance crimes related to driving, boating, and refusal to submit to a lawful chemical test when driving or boating under the influence.

The bill amends ss. 316.193, and 327.35, F.S., to prohibit a person from driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcoholic beverages, any chemical substances set forth in s. 877.111, F.S., any substances controlled under ch. 893, F.S., or *any intoxicating substance* when affected to the extent that the person's normal faculties are impaired.

The bill amends s. 316.1939, F.S., to provide that a person's first refusal to submit to a chemical or physical test of breath or urine is a second degree misdemeanor or a first degree misdemeanor under certain circumstances. Current law provides that a first refusal is not a crime.

Additionally, s. 316.1932, F.S., is amended to require that a person be told that his or her first failure to submit to a lawful test of breath or urine is a second degree misdemeanor¹ or a first degree misdemeanor² under certain circumstances.

Section 316.656, F.S., is amended to prohibit the court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for such a refusal to submit to testing.

Current law provides that a person commits the third degree felony offense of driving on license suspended upon a third or subsequent violation, if the suspension was related to driving under the

¹ A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, as provided in ss. 775.082 or 775.083, F.S.

² A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year and a \$1,000 fine, as provided in ss. 775.082 or 775.083, F.S.

influence or refusal to submit to testing. Section 322.34, F.S., is amended to provide mandatory minimum penalties for this crime.

The bill amends s. 933.02, F.S., to permit the issuance of a search warrant when a sample of blood of a person constitutes evidence relevant to proving specified crimes.

The bill creates s. 316.19395, F.S., to authorize judicial circuits to create driving under the influence diversion programs.

The bill has an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2025.

II. Present Situation:

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;³
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood;⁴ or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.⁵

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.⁶ The penalties for a first time driving under the influence offense are punishable by:

- A period of probation not exceeding one year;⁷
- A fine of not less than \$500 or more than \$1,000;
- Imprisonment for not more than 6 months;
- A mandatory 50 hours of community service;⁸ and
- A mandatory ten-day vehicle impoundment.⁹

³ Section 316.193(1)(a), F.S.

⁴ Section 316.193(1)(b), F.S.

⁵ Section 316.193(1)(c), F.S.

⁶ Section 316.193, F.S.

⁷ Section 316.193(6)(a), F.S.

⁸ *Id.*

⁹ *Id.*

Boating Under the Influence

A person is guilty of boating under the influence if the person is operating a vessel under the influence of an alcoholic beverage, any chemical substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., when affected to the extent that the person's normal faculties are impaired.¹⁰

The criminal penalties for boating under the influence varies depending on numerous factors such as the number of prior convictions, the length of time between convictions, and the defendant's blood alcohol level.¹¹ The penalties for a first time boating under the influence offense are punishable by:

- A fine of not less than \$500 or more than \$1,000 for a first conviction.¹²
- Imprisonment for not more than 6 months;¹³
- A period of probation not exceeding one year;¹⁴
- A mandatory 50 hours of community service;¹⁵ and a mandatory 10-day vessel impoundment or immobilization.¹⁶

Implied Consent-Refusal

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.¹⁷

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 such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test.¹⁸

The 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 the person's privilege to operate a motor vehicle for a period of one 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,

¹⁰ Section 327.35(1)(a), F.S.

¹¹ Section 327.35, F.S.

¹² Section 327.35(2)(a), F.S.

¹³ *Id.*

¹⁴ Section 327.35(6)(a), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Sections 316.1932 (1)(a)1.a., and 327.352(1)(a)1., F.S.

¹⁸ *Id.*

F.S.¹⁹ Additionally, a person operating a vessel must be told that his or her failure to submit to a lawful test of his or her breath will result in a civil penalty of \$500.²⁰

As a result of a refusal to submit to a test or tests required under ch. 316 or ch. 327, F.S., the person 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 ch. 327, F.S., he or she commits a first degree misdemeanor.²¹

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 any alcoholic beverage or chemical substance, or any other controlled substances.²²

Search Warrant Statute

Upon proper affidavits being made, a search warrant may be issued under the following grounds:

- When property has been stolen or embezzled in violation of law;²³
- When any property has been used:
 - As a means to commit any crime;²⁴
 - In connection with gambling, gambling implements and appliances;²⁵ or
 - In violation of s. 847.11, F.S., or other laws in reference to obscene prints and literature;²⁶
- When any property constitutes evidence relevant to proving that a felony has been committed;²⁷
- When property is being held or possessed:
 - In violation of any laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;²⁸
 - In violation of the fish and game laws;²⁹
 - In violation of the laws relative to food and drug;³⁰ or

¹⁹ Section 327.35215(2), F.S., provides when a person refuses to submit to a blood test, breath test, or urine test pursuant to s. 327.352, F.S., (Implied consent), a law enforcement officer authorized to make arrests for violations of this ch. 327, F.S., 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., (Boating under the influence), 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.

²⁰ Section 327.352, F.S.

²¹ A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year and a \$1,000 fine, as provided in ss. 775.082 and 775.083, F.S.

²² Section 316.1932(1)(a)b., F.S.

²³ Section 933.02(1), F.S.

²⁴ Section 933.02(2)(a), F.S.

²⁵ Section 933.02(2)(b), F.S.

²⁶ Section 933.02(2)(c), F.S.

²⁷ Section 933.02(3), F.S.

²⁸ Section 933.02(4)(a), F.S.

²⁹ Section 933.02(4)(b), F.S.

³⁰ Section 933.02(4)(c), F.S.

- In violation of the laws relative to citrus disease pursuant to s. 581.184, F.S.;³¹ or
- When the laws in relation to cruelty to animals, as provided in ch.828, F.S., have been or are violated in any particular building or place.³²

Existing language in s. 933.02, F.S., allows the state to secure a warrant to seize property used *as a means to commit* a felony or misdemeanor.³³ Under the existing language, property *constituting relevant evidence* may be seized only if the suspected crime is a *felony*.^{34 35}

III. Effect of Proposed Changes:

The bill amends ss. 316.193, and 327.35, F.S., to prohibit a person from driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcoholic beverages, any chemical substances set forth in s. 877.111, F.S., any substances controlled under ch. 893, F.S., or *any intoxicating substance* when affected to the extent that the person's normal faculties are impaired.

The bill amends s. 316.1939, F.S., to provide a person's first refusal to submit to a chemical or physical test of breath or urine as a second degree misdemeanor or a first degree misdemeanor if the person after having been informed as required still refuses to submit to a lawful test of his or her breath or urine.

Additionally, s. 316.1932, F.S., is amended to require that a person be told that his or her first failure to submit to a lawful test of breath or urine is a second degree misdemeanor³⁶ or a first degree misdemeanor³⁷ if 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.

Section 316.656, F.S., is amended to prohibit the court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for such a refusal to submit to testing.

Current law provides that a person commits the third degree felony offense of driving on license suspended upon a third or subsequent violation, if the suspension was related to driving under the influence or refusal to submit to testing. Section 322.34, F.S., is amended to provide mandatory minimum penalties for this crime. The mandatory minimum penalties include:

- A minimum of 30 days in jail for a first conviction;
- A minimum of 60 days in jail upon a second conviction; and
- A minimum of 90 days in jail upon a third or subsequent conviction.

³¹ Section 933.02(4)(d), F.S.

³² Section 933.02(5), F.S.

³³ Section 933.02(2)(a), F.S.

³⁴ Section 933.02(3), F.S.

³⁵ *Bordo v. State*, 627 So.2d 561 (Fla. 4th DCA 1993) ("Property used to commit a any crime whether felony or misdemeanor may be sized under a warrant; while property merely constituting relevant evidence of a crime may be seized only if the suspected crime is a felony."); *See also*, *State v. Geiss*, 70 So.3d 642 (Fla. 5th DCA 2011).

³⁶ A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, as provided in ss. 775.082 or 775.083, F.S.

³⁷ A first-degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year and a \$1,000 fine, as provided in ss. 775.082 or 775.083, F.S.

The bill amends s. 933.02, F.S., to permit the issuance of a search warrant when a sample of blood of a person constitutes evidence relevant to proving that a violation of ss. 316.193 (driving under the influence) or 327.35, F.S., (boating under the influence) has been committed.

The bill creates s. 316.19395, F.S., to authorize judicial circuits to a driving under the influence diversion program. A judicial circuit that creates such a diversion program must publish the terms and conditions of the program on the website of the office of the state attorney for that circuit.

Each judicial circuit that offers a diversion program under this section must notify the Department of Law Enforcement (FDLE) of each person who successfully completes the program. The FDLE must notate the successful completion of the diversion program on the driving record of each such person. A person who successfully completes a diversion program offered under this section is ineligible for future participation in such a program.

The bill takes effect on October 1, 2025.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a positive indeterminate fiscal impact. The bill amends and creates multiple statutes. Per the Department of Corrections, in FY 23-24, there were 516 new commitments to prison for felonies under the amended statutes. While this bill expands the definition for what under the influence means, the number of potential offenders under this new language is not known. Therefore, the magnitude of the impact on the prison population cannot be determined.³⁸

The bill may have an indeterminate impact on the anticipated judicial or court workload. Provisions prohibiting suspension of guilt or sentencing for refusal to submit to testing as well as reporting requirements for DUI diversion programs are not likely to have a significant impact on judicial workload; however, the bill may encourage judicial circuits to implement a DUI Court which could reduce workload.³⁹ The effect on workload from establishing a new misdemeanor offense for first refusals to submit to testing, and authorizing search warrants to obtain a blood sample as evidence of DUI or BUI, is too speculative to quantify. To the extent arrests for first refusals and warrant requests increase, judicial workload may also increase.

The bill may require the creation/amendment of standard jury instructions relating to DUI, BUI, and refusal to submit to testing.

The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial workload resulting from the creation of a new misdemeanor offense related to first refusal, etc.

Trial court judicial workload is measured using a case weighting system that calculates the amount of time it takes for a judge to dispose of a case. The number of case filings using the case weighting system is used to determine the need for additional judicial resources each year. Any judicial workload increases in the future as a result of legislation that passes this session will be reflected in the Supreme Court's annual opinion, *In re: Certification of Need for Additional Judges*. Please note that the workload impact from each bill may be nominal but the cumulative effect to the State Courts System from all bills could be substantial.⁴⁰

VI. Technical Deficiencies:

None.

³⁸ Office of Economic and Demographic Research, *SB 138 Preliminary Estimate*, (on file with the Senate Committee on Criminal Justice).

³⁹ Office of the State Courts Administrator, *2025 Judicial Impact Statement* on SB 138, pg. 2 (on file with the Senate Committee on Criminal Justice). Currently there are four DUI courts operating statewide.

⁴⁰ Office of the State Courts Administrator, *2025 Judicial Impact Statement* on SB 138, pg. 3 (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.193, 316.1932, 316.1939, 316.656, 322.34, 327.35, and 933.02.

This bill creates section 316.19395 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.