

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1145 Driving Under the Influence Diversion Programs

SPONSOR(S): Criminal Justice Subcommittee, Altman

TIED BILLS: **IDEN./SIM. BILLS:** SB 1396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 2 N, As CS	Frost	Hall
2) Appropriations Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In Florida, a person is guilty of driving under the influence (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 a chemical substance, or any controlled substance to the extent the person's normal faculties are impaired;
- 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.

Criminal penalties for a DUI offense vary depending on the offender's breath-alcohol content or blood-alcohol content (BAC) when arrested, whether the DUI resulted in a motor vehicle crash with injuries to another person or property, whether the driver has any prior DUI convictions and how much time has passed between those convictions, and the age of any passengers in the vehicle.

Florida provides several statutory diversion programs, such as a general pretrial diversion program for non-violent misdemeanor and third degree felony charges, a treatment-based drug court program, a mental health court program, and a veteran's court program. Florida does not have a statutory model for a DUI diversion program, however, approximately 10 state attorneys' offices in various judicial circuits have individual DUI diversion programs. Each program differs in requirements, cost, duration, and whether charges are dismissed or reduced to a reckless driving charge upon successful completion.

CS/HB 1145 creates a DUI Model Diversion Program (Program) which each judicial circuit may establish. The bill establishes eligibility requirements and Program participation requirements.

The bill encourages each judicial circuit to negotiate with alcohol monitoring device providers to offset the cost of all or part of the Program's required alcohol monitoring devices. The bill requires the State Attorney to allow a successful participant to plea to the reduced charge of reckless driving with adjudication withheld.

The bill provides that a subsequent DUI offense, received after successful completion of the Program, will be charged in the same manner as if the person had a prior DUI conviction.

The bill may have a negative indeterminate effect on prison and jail beds by reducing the number of convictions for first-time DUI offenders and reducing the recidivism of DUI offenders.

The bill provides an effective date of October 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Driving Under the Influence

In Florida, a person is guilty of driving under the influence (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 a chemical substance,¹ or any controlled substance² to the extent the person's normal faculties are impaired;
- 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.³

In 2018, there were a total of 32,177 arrests for DUI in Florida, and of these arrests, 69 were juveniles and 32,108 were adults.⁴ According to the Florida Department of Highway Safety and Motor Vehicles there were 5,106 alcohol-related motor vehicle crashes in 2018, compared to 5,125 in 2017 and 5,223 in 2016. Three hundred fifty-two of the 5,106 alcohol-related motor-vehicle crashes in 2018 resulted in a fatality, compared to 350 fatalities in 2017 and 417 fatalities in 2016.⁵

DUI Penalties

Criminal penalties for a DUI offense vary depending on the offender's breath-alcohol content or blood-alcohol content (BAC) when arrested, whether the DUI resulted in a motor vehicle crash with injuries to another person or property, whether the driver has any prior DUI convictions and how much time has passed between those convictions, and the age of any passengers in the vehicle.

First-Time Offenders

A first DUI offense is subject to the following penalties:

- A fine ranging from \$500 to \$1,000;
- Up to six months imprisonment;
- Driver license suspension from six months to one year;⁶ and
- Probation for up to one year, including the following conditions:
 - 50 hours of community service;
 - Vehicle impoundment or immobilization for 10 days, which may not occur concurrently with any term of imprisonment.⁷

If a 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 include:

- A fine ranging from \$1,000 to \$2,000;
- Up to nine months imprisonment; and
- Mandatory ignition interlock device (IID) installation in all vehicles leased or owned and routinely operated by the offender for at least six continuous months.⁸

¹ S. 877.111, F.S.

² Ch. 893, F.S.

³ S. 316.193(1), F.S.

⁴ Florida Department of Law Enforcement, *Driving Under the Influence – DUI: Summary*, <https://www.fdle.state.fl.us/FSAC/Crime-Data/DUI.aspx> (last visited Feb. 4, 2020).

⁵ Florida Highway Safety and Motor Vehicles, *Traffic Crash Facts: Annual Report 2018*, https://www.flhsmv.gov/pdf/crashreports/crash_facts_2018.pdf (last visited Feb. 4, 2020).

⁶ S. 316.193(2), F.S.

⁷ S. 316.193(6)(a), F.S.

⁸ S. 316.193(4), F.S.

Second and Subsequent Offenders

A second DUI offense is subject to the following penalties:

- A fine ranging from \$1,000 to \$2,000;
- Up to nine months imprisonment; and
- Mandatory IID installation in all vehicles leased or owned and routinely operated by the offender for at least one year.⁹

If a person's second DUI offense occurs within five years of a previous DUI conviction, the penalty is enhanced to include:

- Imprisonment for at least 10 days, of which at least 48 hours must be consecutive;
- Vehicle impoundment for 30 days, which may not occur concurrently with any term of imprisonment;¹⁰ and
- Driver license suspension for at least five years.¹¹

If a second-time offender's BAC is 0.15 or higher, or a passenger under the age of 18 is present in the vehicle, the penalty is further enhanced to include:

- A fine ranging from \$2,000 to \$4,000;
- Imprisonment not exceeding one year;¹² and
- Mandatory IID installation in all vehicles leased or owned and routinely operated by the person for at least two continuous years.¹³

A third DUI offense that occurs more than 10 years after a prior conviction is subject to a fine ranging from \$2,000 to \$5,000,¹⁴ imprisonment for no more than one year, and mandatory IID installation in all vehicles leased or owned and routinely operated by the person for at least two years.¹⁵ A third offense that occurs within 10 years of a prior conviction is a third degree felony,¹⁶ and requires IID installation in all vehicles leased or owned and routinely operated by the offender for not less than two years,¹⁷ imprisonment for a minimum of 30 days, of which at least 48 hours must be consecutive,¹⁸ and driver license suspension for at least 10 years.¹⁹

A fourth or subsequent DUI offense, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than \$1,000 or more than \$5,000.²⁰ If the fourth or subsequent offense occurs within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.²¹

⁹ S. 316.193(2), F.S.

¹⁰ S. 316.193(6)(b), F.S.

¹¹ S. 322.28(2)(a)2, F.S.

¹² S. 316.193(4), F.S.

¹³ S. 316.193(4)(c), F.S.

¹⁴ 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 fine must be at least \$4,000. S. 316.193(4)(a)3, F.S.

¹⁵ S. 316.193(2)(b)2, F.S.

¹⁶ 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.

¹⁷ S. 316.193(2)(b), F.S.

¹⁸ S. 316.193(6)(c), F.S.

¹⁹ S. 322.28(2)(a)3, F.S.

²⁰ S. 316.193(2)(b)3, F.S.

²¹ S. 316.193(6)(c), F.S.

Property Damage or Injury

If a person convicted of DUI causes, or contributes to causing, damage to the property or person of another, serious bodily injury to another, or the death of another, the following enhanced penalties apply:

- An offense involving damage to another person or to property is a first degree misdemeanor.²²
- An offense involving serious injury to another person is a third degree felony.²³
- An offense resulting in death is a second degree felony.²⁴
 - However, if at the time of the crash the offender knew or should have known that the crash occurred, and the offender failed to give information and render aid, the offense is a first degree felony.²⁵

Diversion Programs

A pretrial intervention program²⁶ or diversion program is a voluntary alternative to prosecution which allows an offender to divert his or her case from the traditional criminal justice process into a program requiring compliance with certain conditions, including community service, counseling, and other rehabilitative services. Successful completion of an individualized diversion program ideally results in a dismissal of the criminal charge. The purpose of a pretrial diversion program is to enhance justice and public safety by addressing the root cause of the defendant's criminal behavior, reduce the stigma accompanying a record of conviction, restore victims, and assist with conserving court and criminal justice resources.²⁷

Florida provides several statutory diversion programs, such as a general pretrial diversion program for non-violent misdemeanor and third degree felony charges,²⁸ a treatment-based drug court program,²⁹ a mental health court program,³⁰ and a veteran's court program.³¹

DUI Diversion

Florida does not have a statutory model for a DUI diversion program, however, approximately 10 state attorneys' offices in various judicial circuits have established individual DUI diversion programs.³² Each program differs in program requirements, cost, duration, and whether charges are dismissed or reduced to a reckless driving charge.³³ However, based on current Florida law, a participant who receives a new DUI charge after successfully completing a diversion program will be charged as though the offense is his or her first DUI, rather than receiving the enhanced penalties a second DUI offense is normally subject to.³⁴

²² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

²³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

²⁴ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

²⁵ S. 316.193(3)(c)3.b., F.S.

²⁶ S. 948.08, F.S.

²⁷ Center for Health & Justice, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (December 2013) http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited Feb. 4, 2020).

²⁸ S. 948.08, F.S.

²⁹ Ss. 397.334 and 948.16, F.S.

³⁰ Ss. 394.47892 and 948.16, F.S.

³¹ Ss. 394.47891 and 948.16, F.S.

³² Florida Impaired Driving Coalition, *DUI/DWI Diversion Programs Suggested Best Practices with Supportive Reasoning*, (Apr. 18, 2019) p. 1.

³³ "Reckless driving" is the operation a motor vehicle in a manner demonstrating a willful or wanton disregard for safety, and is typically a misdemeanor offense, unless the reckless driving led to a motor vehicle crash resulting in serious bodily injury. S. 316.192, F.S.

³⁴ *Id.*

Effect of Proposed Changes

CS/HB 1145 creates a Driving Under the Influence Model Diversion Program (Program) which each judicial circuit may establish. If established, the State Attorney (SA) of each circuit will operate the Program.

The bill provides that a person is eligible for the Program if he or she:

- Has no prior substance-related criminal traffic conviction, felony conviction, or more than two misdemeanor convictions.
- Has not previously completed a diversion program for a DUI.
- Was not involved in a crash or accident relating to the DUI.
- Did not have a person under 18 in the car during the DUI offense.
- Did not have a blood-alcohol or breath-alcohol content (BAC) of 0.20 or more.
- Did not damage any person or property during the DUI offense.

The bill requires participation in the Program for at least 12 months, during which time a participant must not possess or consume any alcohol or illegal drugs, and must:

- Complete 50 hours of community service if his or her BAC was 0.15 or lower, or 75 hours if his or her BAC was higher than 0.15 but lower than 0.20.
- Complete a substance abuse course, including a psychosocial evaluation and any recommended treatment, and a Victim Impact Class.
- Impound all vehicles leased, owned, or operated for 10 days, and complete one of the following, chosen by the state attorney:
 - Installation of an ignition interlock device (IID) for at least 30 days; or
 - Wearing of a continuous alcohol monitoring device or use of a mobile alcohol monitoring device.

The bill encourages each judicial circuit to negotiate with alcohol monitoring device providers to offset the cost of all or part of an alcohol monitoring device for participants who demonstrate a genuine inability to pay for such device. The bill directs the SA to offer successful Program participants a plea to the reduced charge of reckless driving with adjudication withheld, but a person who fails to complete the Program may still be prosecuted for DUI.

The bill provides that if a Program participant is charged with a new DUI offense after successfully completing of the Program, the offense may be charged as though the person had a prior conviction for DUI.

The bill requires the SA in charge of each program to report the program's annual results.

The bill provides an effective date of October 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates s. 316.19395, F.S., relating to driving under the influence diversion pilot program.

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

Section 3: Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a negative indeterminate impact on prison beds by reducing the recidivism of DUI offenders.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a negative indeterminate impact on jail beds by reducing the number of convictions for first-time DUI offenders and reducing the recidivism of DUI offenders.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2020, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Created a Driving Under the Influence (DUI) Model Diversion Program each judicial circuit may establish.
- Established eligibility requirements and DUI program requirements.
- Encouraged each judicial circuit to negotiate with alcohol monitoring device providers to offset the cost of all or part of the DUI program's required alcohol monitoring devices.
- Required the state attorney to allow a successful participant to plea to a reduced charge of reckless driving with adjudication withheld.
- Provided that a subsequent DUI offense, received after successful completion of the diversion program, will be charged in the same manner as if the person had a prior DUI conviction.
- Made other technical, clarifying, and stylistic changes.