

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 949 Driving Under the Influence
SPONSOR(S): Transportation & Infrastructure Subcommittee; Byrd and others
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	10 Y, 0 N, As CS	Johnson	Vickers
2) Judiciary Committee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

Current Florida law provides the court the discretion to order mandatory Ignition Interlock Device (IID) installation for all first-time offenders of Florida's Driving Under the Influence (DUI) law, in addition to any other authorized penalties. If the court exercises this discretion, the installation period must be for at least six months.

The bill provides first time DUI offenders, as a condition of probation, may voluntarily place an IID on his or her vehicle for at least six months. If the person successfully completes the terms of the IID placement order, he or she will have adjudication withheld, provided the person previously has not had an adjudication withheld or an adjudication of guilt for any offense.

The bill may have an indeterminate, but negative impact on state funds. The Department of Highway Safety and Motor Vehicles (DHSMV) will require additional resources to monitor and oversee additional persons who choose to install an IID on his or her vehicle.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

While studies reveal a downward trend in alcohol use by drivers over the past forty years,¹ crashes involving alcohol impairment currently cost over \$37 billion annually.² Studies also establish a strong correlation between alcohol intoxication and the risk of being involved in a crash. Drivers with an alcohol level of 0.08 percent were approximately four times more likely to be involved in a crash than an unintoxicated driver, and drivers with an alcohol level of 0.15 percent were twelve times more likely to be involved in a crash.³

In calendar year 2016, DHSMV reported the following number of DUI convictions:⁴

Number of Offenses	Number of Convictions
1 st Offense	12,627
2 nd Offense	3,154
3 Rd Offense	858
4 th or More	382

According to DHSMV, there are approximately 9,000 DUI offenders in Florida with IIDs installed at any given time.

Criminal Penalties

Criminal penalties for DUI vary depending on factors such as the number of prior convictions, how much time has passed between convictions, and the offender's blood-alcohol or breath-alcohol concentration (BAC).

A first conviction for driving under the influence is a first degree misdemeanor⁵ and will result in a fine of at least \$500, but no more than \$1,000, a period of up to six months in jail,⁶ a period of up to one year on probation, participation in at least fifty hours of community service, and a mandatory vehicle impoundment of the vehicle operated by the driver during the DUI.⁷ The court has the discretion to order IID installation for a first-time offender, in addition to any other authorized penalties, for a period of at least six months.⁸

If a first-time offender's blood-alcohol level (BAC) is 0.15 percent or higher, or if a passenger under eighteen years of age is present in the vehicle during the offense, the penalties are enhanced. Such an offender is subject to a fine of at least \$1,000, but no more than \$2,000, a period of up to nine months

¹ The National Highway Traffic Safety Administration has conducted several National Roadside Surveys since the first Survey was conducted in 1973. The results of these surveys have revealed a downward trend in alcohol use by vehicle operators from 1973 to 2014, when the most recent Survey was completed. U.S. Dept. of Transportation, *Results of the 2013-2014 National Roadside Survey of Alcohol and Drug Use by Drivers*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. (Feb. 2015), http://www.nhtsa.gov/staticfiles/nti/pdf/812118-Roadside_Survey_2014.pdf. (Last visited March 7, 2017)

² U.S. Dept. of Transportation, *Impaired Driving*, <http://www.nhtsa.gov/Impaired> (last visited March 6, 2017).

³ U.S. Dept. of Transportation, *Drug and Alcohol Crash Risk – Fact Sheet*, <http://www.nhtsa.gov/staticfiles/nti/pdf/11388c-CrashRiskStudy-FactSheet.pdf> (last visited March 7, 2017).

⁴ E-mail from DHSMV, March 9, 2017, Copy on file with Transportation & Infrastructure Subcommittee.

⁵ Absent statutorily prescribed penalties, a first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁶ s. 316.193(2), F.S.

⁷ s. 316.193(6)(a), F.S.

⁸ s. 316.1937, F.S.

in jail, and mandatory IID installation upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person for not less than six months.⁹

It is a third degree felony¹⁰ for an offender to commit a DUI offense involving serious bodily injury to another person, and a second degree felony¹¹ if the DUI offense results in the death of any person or unborn child.¹² It is a first degree felony¹³ if an offender knew or should have known that a crash occurred and failed to give information and render aid and the crash results in the death of any person or unborn child.¹⁴

Installation of Ignition Interlock Devices

Section 316.193, F.S., requires IID's to be installed on the vehicles of persons convicted of certain DUI offenses. The following table summarizes Florida's IID sentencing requirements:

DUI Conviction	IID Requirement
1 st Conviction	If court ordered
1 st Conviction if BAC is ≥ 0.15 , or minor in car	Mandatory for at least 6 continuous months
2 nd Conviction	Mandatory for at least 1 year
2 nd Conviction if BAC is ≥ 0.15 , or minor in car	Mandatory for at least 2 continuous years
3 rd Conviction	Mandatory for at least 2 years

In 2014, the Office of Program Policy Analysis & Government Accountability (OPPAGA) conducted a study researching ignition interlock devices and DUI recidivism rates. An ignition interlock device prevents the start of a vehicle with a breath sample above .025, collects data, and records and stores visual evidence of device use. Research shows that ignition interlock devices, while installed, were more effective at reducing re-arrest rates for alcohol-impaired driving when compared to other sanctions, such as license suspensions. The study found the six month recidivism rate for first-time DUI offenders that were not required to install an IID was 1.74 percent. When compared, the recidivism rate for first-time offenders required to use the IID was less with a rate of 0.34 percent. However, the study also found that only 49 percent of Florida DUI offenders installed an IID, as required, after completing their period of license revocation.¹⁵

All 50 states have laws regarding IIDs with 25 states requiring the installation of IIDs for first-time DUI offenses.

Ignition Interlock Device Requirements

IIDs are dashboard-mounted breathalyzers that require drivers to perform an alcohol detection test in order to operate the motor vehicle. IIDs prevent vehicles from starting if the driver's breath-alcohol level is above a predefined limit. These devices also conduct random "rolling" retests while the motor is running.¹⁶

Section 316.193(11) through (14), F.S., provides the statutory requirements regarding IIDs. The statutes require DHSMV to adopt rules regarding the use of IIDs.¹⁷

⁹ s. 316.193(4), F.S.

¹⁰ 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.

¹¹ A second degree felony is punishable by up to fifteen years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

¹² s. 316.193(3), F.S.

¹³ A first degree felony is punishable by up to thirty years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

¹⁴ s. 316.193(3), F.S.

¹⁵ The Florida Legislature Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1414rpt.pdf> (last visited March 6, 2017).

¹⁶ The Florida Legislature Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1414rpt.pdf> (last visited March 6, 2017).

¹⁷ Section 316.193(11), F.S.,

Section 316.193(13)(a), F.S., provides for the regulation of the immobilizing agencies. Immobilization agencies responsible for immobilizing vehicles are subject to strict compliance with the following conditions and restrictions:

- Any immobilization agency engaged in the business of immobilizing vehicles must attest to the clerk of the court that the agency:
 - Has verifiable experience in immobilizing vehicles.
 - Maintains accurate and complete records of all payments for the immobilization, copies of all documents pertaining to the court's order of impoundment or immobilization, and any other documents relevant to each immobilization. Such records must be maintained by the immobilization agency for at least 3 years.
 - Employs and assigns persons to immobilize vehicles meeting certain requirements such as the person has not been adjudicated incapacitated, not a chronic user of drugs or alcohol, and not convicted of a felony.

Fees for IIDs are not set by DHSMV and vary by vendor, there is usually a fee associated with the installation of the IID and monthly charges of approximately \$100.¹⁸

Proposed Changes

The bill amends s. 316.193(2)(c), providing that in addition to other penalties provided, as a condition of probation and notwithstanding s. 316.656, F.S.,¹⁹ if a person convicted of a misdemeanor of the second degree for a first DUI offense voluntarily places, or if the court order placement, of an IID, the court will withhold adjudication if the person does not have a prior withholding of adjudication or adjudication of guilt for any other offense. Failure to comply with the full terms of the order for placement of an IID may result in, among other penalties, the court ordering an adjudication of guilt.

The bill defines the term "conviction" for purposes of s. 316.193(2), F.S., as a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

B. SECTION DIRECTORY:

Section 1 amends s. 316.193, F.S., relating to driving under the influence.

Section 2 provides an effective date of October 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate, but negative impact on state. Additional resources will be necessary for DHSMV to monitor and oversee the IID program with the resources required being determined by the number of first time DUI offenders choosing an IID.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

¹⁸ E-mail from DHSMV. March 7, 2017. (Copy on file with Transportation & Infrastructure Subcommittee).

¹⁹ Section 316.656, F.S., relates to mandatory adjudication; prohibition against accepting plea to lesser included offense.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An individual who chooses to have an IID installed on his or her vehicle will incur fees associated with the IID. While the fees are not set by DHSMV and vary by vendor, there is usually a fee associated with the installation of the IID and monthly charges of approximately \$100.²⁰

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The bill as originally filed required mandatory IID installation for all first-time DUI offenders. The strike-all amendment made an IID for a first time DUI offender optional, with adjudication being withheld for specified persons who successfully comply with the terms of the order requiring placement of an IID.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

²⁰ E-mail from DHSMV. March 7, 2017. (Copy on file with Transportation & Infrastructure Subcommittee.
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DATE: 3/21/2017