

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 1396

INTRODUCER: Senator Simmons

SUBJECT: Driving Under the Influence

DATE: February 3, 2020

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Stokes | Jones | CJ | Pre-meeting |
| 2. | _____ | _____ | ACJ | _____ |
| 3. | _____ | _____ | AP | _____ |

I. Summary:

SB 1396 creates s. 316.19395, F.S., which provides that a Driving Under the Influence Diversion Pilot Program (pilot program) must be established in each judicial circuit. The purpose of the pilot program is to offer a person with a first offense of driving under the influence (DUI), contrary to s. 316.193, F.S., an opportunity to avoid a criminal history record associated with a DUI, while ensuring the person receives substance abuse treatment if necessary.

Additionally, this bill provides for the eligibility requirements for participation in the pilot program, and the requirements for successful completion of the pilot program. Successful completion of the pilot program must result in a plea offer for the offense of reckless driving, contrary to s. 316.192, F.S. If the person accepts the offer, the court must withhold adjudication.

This bill also requires the state attorney from each judicial circuit to annually report the results of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to establish a statewide database of participants of the pilot program by July 1, 2023.

The Criminal Justice Impact Conference estimates this bill will have a “negative insignificant” prison bed impact (a decrease of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2020.

II. Present Situation:

There are multiple pre-trial diversion programs that are intended to divert individuals charged with crimes from the traditional criminal justice system. While some diversion programs are provided in statute, other programs may vary depending upon what judicial circuit they are established in. Some diversion programs that are included in statute include, the prison diversion program,¹ the state attorney bad check diversion program,² and the pretrial intervention program.³

Counties, including Miami-Dade,⁴ Orange,⁵ Sarasota, Manatee, DeSoto,⁶ and Palm Beach⁷ all have DUI diversion programs. There is no uniform standard for DUI diversion programs. One example, Palm Beach County's DUI Offender Program, permits eligible participants to complete program requirements within two months in order to obtain a plea offer to reckless driving. The program requirements include 20 hours of community service, successful completion of DUI School, successful completion of the Victim Impact Panel, and successful installation of the Ignition Interlock alcohol monitoring device.⁸

There were 43,725 criminal violations for DUI in 2018.⁹ According to the American Addiction Centers, drunk driving may be a behavioral sign of alcohol abuse.¹⁰

Driving Under the Influence

A person is guilty of DUI if he or she drives or is in actual physical control of a vehicle and he or she:

- 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;
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or

¹ Section 921.00241, F.S., provides that a court may divert an offender from the state correctional system, who would otherwise be sentenced to a state facility, by sentencing the offender to a nonstate prison sanction if the offender meets certain criteria.

² Section 832.08, F.S., provides that the state attorney may divert offenders who have issued a bad check from prosecution.

³ Section 948.08, F.S., provides that any first offender, or an offender who does not have more than one nonviolent misdemeanor, and who is charged with any misdemeanor or third degree felony is eligible to participate in a pretrial intervention program upon consent of the victim, the state attorney, and the judge. The offender may have his or her charges dismissed upon successful completion of the pretrial intervention program.

⁴ Miami-Dade State Attorney Katherine Fernandez Rundle, *Diversion Programs*, available at <http://www.miamisao.com/services/diversion-programs/> (last visited January 31, 2020).

⁵ Office of the State Attorney Aramis D. Ayala, *Diversion Programs*, available at <https://www.sao9.net/diversion-programs.html> (last visited January 31, 2020).

⁶ Office of the State Attorney Ed Brodsky, *Driver Enhanced Treatment Education Rehabilitation (DETER)*, available at <https://www.sao12.org/divisions/driver-enhanced-treatment-education-rehabilitation> (last visited January 31, 2020).

⁷ Office of the State Attorney Dave Aronberg, *Palm Beach County 1st Time DUI Offender Program*, available at <http://www.sa15.state.fl.us/stateattorney/ResourceInformation/Content/DUI/DUIFirstTimeOffenderProgram-2020.pdf> (last visited January 30, 2020).

⁸ *Id.*

⁹ Florida Department of Highway Safety and Motor Vehicles, *Annual Uniform Traffic Citation Report*, available at <https://services.flhsmv.gov/SpecialtyPlates/UniformTrafficCitationReport> (last visited January 16, 2020).

¹⁰ American Addiction Centers, *Alcoholism: Symptoms and Signs*, June 8, 2019, available at <https://americanaddictioncenters.org/alcoholism-treatment/symptoms-and-signs> (last visited January 16, 2020).

- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.¹¹

The criminal penalties for DUI 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.¹²

The penalties for a first time DUI 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.¹³

The court must place all offenders convicted of violating this section on monthly reporting probation, and as a condition of probation, must require:

- Completion of a substance abuse course conducted by a DUI program licensed by the Department of Highway Safety and Motor Vehicles (DHSMV) under s. 322.292, F.S., which must include a psychosocial evaluation.
- Completion of substance abuse treatment, if the offender is referred to such treatment.¹⁴

Section 316.656, F.S., prohibits a court from withholding adjudication of guilt for any violation of s. 316.193, F.S., the offense of DUI. This means the court must order the person adjudicated guilty. A conviction for the offense of DUI may have long lasting repercussions even if it is the person's only offense. For example, an adjudication of guilt for DUI prevents a person from petitioning the court for expunction.¹⁵

Section 316.656, F.S., also prohibits the court from accepting a plea of guilty to a lesser offense from a person who has been given a breath or blood test to determine blood or breath alcohol content by weight of 0.15 percent or more. The offense of reckless driving, contrary to s. 316.192, F.S., is not a lesser included offense of DUI.¹⁶

Ignition Interlock Device

An ignition interlock device is a dashboard-mounted breathalyzer that requires a driver to blow in the breathalyzer in order to operate the motor vehicle. The driver must breathe into the device approximately every 30 minutes.¹⁷ Section 316.193, F.S., requires an ignition interlock device to be installed on the vehicles of persons convicted of certain DUI offenses. For a first DUI offense, the court may order the placement of an ignition interlock device for at least six continuous months.¹⁸

¹¹ Section 316.193(1), F.S.

¹² Section 316.193, F.S.

¹³ Section 316.193(2) and (6)(a), F.S.

¹⁴ Section 316.193(5), F.S.

¹⁵ Section 943.0585, F.S.

¹⁶ See Fla. Std. Jury Inst. (Crim.) 28.1; *Anguille v. State*, 243 So. 3d 410, 413 (Fla. 4th DCA 2018).

¹⁷ DMV Florida, *Florida Ignition Interlock*, available at <https://www.dmvflorida.org/florida-traffic-laws/ignition-interlock> (last visited January 16, 2020).

¹⁸ Section 316.193(2)(c), F.S.

Section 316.1937, F.S., provides that a court must determine the defendant’s ability to pay for the installation of the ignition interlock device if he or she claims inability to pay. If the court determines that the defendant is unable to pay for the installation of the device, the court can order that any portion of a fine paid for violating s. 316.193, F.S., be allocated to defray the costs of installing the ignition interlock device.¹⁹

The table below summarizes when an ignition interlock device is required in Florida.²⁰

| DUI conviction | Ignition interlock device required |
|---|--|
| 1st conviction | If court orders for at least 6 continuous months |
| 1st conviction if blood-alcohol level is \geq 0.15, or minor in car | Mandatory for at least 6 continuous months |
| 2nd conviction | Mandatory for at least 1 year |
| 2nd conviction if blood-alcohol level is \geq 0.15, or minor in car | Mandatory for at least 2 continuous years |
| 3rd conviction | Mandatory for at least 2 years |

The DHSMV contracts with vendors to provide ignition interlock devices for offenders in Florida. The devices must meet or exceed the current standards of the National Highway Traffic Safety Administration.²¹ The DHSMV oversees and monitors the ignition interlock devices and must adopt rules for the implementation of ignition interlock devices.²²

The Florida Legislature’s Office of Program Policy Analysis and Government Accountability conducted a study researching ignition interlock devices and DUI offense recidivism rates. The research showed 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.²³

The study also found the six month recidivism rate for first-time DUI offenders that were not required to install an ignition interlock device was 1.74 percent compared to the recidivism rate for first-time offenders required to use the ignition interlock device which was less with a rate of 0.34 percent.²⁴ However, only 49 percent of Florida’s DUI offenders installed an ignition interlock device, as required, after completing their period of license revocation.²⁵

¹⁹ Section 316.1937(2)(d), F.S.

²⁰ Section 316.193, F.S.

²¹ Section 316.1938, F.S.

²² Sections 316.1938 and 316.193(11), F.S.

²³ Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, Report No. 14-14, (December 2014) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1414rpt.pdf> (last visited January 16, 2020).

²⁴ *Id.* at 8.

²⁵ *Id.* at 4-5.

Reckless Driving

A person is guilty of reckless driving if he or she drives a vehicle in a willful or wanton disregard for the safety of persons or property. Fleeing a law enforcement officer in a motor vehicle is reckless driving *per se*.²⁶

A first conviction of reckless driving may be punished:

- By a term of imprisonment not exceeding 90 days; or
- By a fine, not less than \$25 nor more than \$500; or
- By both fine and imprisonment.

If the court has reasonable cause to believe the use of alcohol, chemical substances as set forth in s. 877.111, F.S., or controlled substances under ch. 893, F.S., contributed to the violation, the court must direct the person to complete a DUI program substance abuse education course and evaluation as provided in s. 316.193(5), F.S.

III. Effect of Proposed Changes:

This bill creates s. 316.19395, F.S., which provides that a Driving Under the Influence Diversion Pilot Program must be established in each judicial circuit. The purpose of the pilot program is to offer a person with a first offense of DUI, contrary to s. 316.193, F.S., an opportunity to avoid a criminal history record associated with a DUI, while ensuring the person receives substance abuse treatment if necessary.

The state attorney in each judicial circuit must develop policies and procedures for the pilot program, including program implementation and operation and the selection of approved program providers. The state attorney must consult with local law enforcement, the public defender, and local program providers to develop the policies and procedures of the pilot program.

A person charged with DUI is eligible for the pilot program if he or she:

- Has not been charged with a prior alcohol-related or drug-related criminal traffic offense, regardless of disposition.
- Does not have a prior or pending felony conviction.
- Has no more than two prior misdemeanor convictions.
- Was not involved in a motor vehicle crash or accident relating to the charge of DUI.
- Was not, at the time of the offense, accompanied in the vehicle by a person under 18 years of age.
- Did not, at the time of the offense, have a blood-alcohol level or breath-alcohol level of 0.20 or higher.
- Has not previously participated in the pilot program.

²⁶ Section 316.192(1), F.S.

Additionally, this bill provides for program requirements. A person who participates in the pilot program must:

- Participate for 12 months, during which period he or she may not possess or consume alcohol, illegal drugs, or prescription drugs not prescribed for him or her. He or she must complete the following as administered by an approved program provider:
 - Fifty hours of community service if, at the time of the offense, the person had a blood-alcohol level or breath-alcohol level higher than 0.15 but lower than 0.20 or did not provide a blood or breath sample.
 - A substance abuse course conducted by a DUI program licensed by the DHSMV under s. 322.292, F.S., which must include a psychosocial evaluation of the person, and any substance abuse treatment required by such program.
 - A victim's impact panel session, if such panel exists within the judicial circuit, or a victim's impact class.
- Pay all fines and standard costs imposed by the judicial circuit.
- Have all motor vehicles that are individually or jointly leased or owned and routinely operated by the person impounded or immobilized for a period of 10 days.
- After the impoundment or immobilization of the vehicle, install and use an ignition interlock device approved by the department in accordance with s. 316.1938, F.S., for a period of:
 - Ninety days if, at the time of the offense, the person had a blood-alcohol level or breath-alcohol level of 0.15 or lower.
 - One hundred eighty days if, at the time of the offense the person had a blood-alcohol level or breath-alcohol level of higher than 0.15 but lower than 0.20, or did not provide a blood or breath sample.

The bill provides a formula for determining whether the person has the ability to pay for the ignition interlock. If the person claims they have an inability to pay for an ignition interlock device, and the court finds that they are unable to pay, the monthly leasing fee will be discounted by 50 or 25 percent, depending upon the person's income. A person who qualifies for a discount is not required to pay cost of installation or deinstallation.

Successful completion of the pilot program must result in a plea offer for the offense of reckless driving, contrary to s. 316.192, F.S. If the person accepts the offer, the court must withhold adjudication. If the person fails to successfully complete the pilot program, the state attorney may discharge the person from the pilot program and pursue prosecution for the offense of DUI.

This bill also requires the state attorney from each judicial circuit to report the results of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Each judicial circuit must provide the number of:

- Cases diverted from prosecution of DUI.
- Persons who successfully completed the pilot program.
- Persons who failed to successfully complete the pilot program and were discharged from the program.
- Persons who successfully completed the pilot program who were later charged with another alcohol-related or drug-related traffic offense.

Additionally the DHSMV must establish a statewide database of participants of the pilot program by July 1, 2023. Each judicial circuit must provide monthly reports of the number of participants in the program.

This bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill relates to the prosecution and punishment for certain DUI offenses and criminal laws are exempt from the requirement of Article VII, Section 18 of the Florida Constitution, relating to unfunded mandates.

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:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates this bill will have a “negative insignificant” prison bed impact (a decrease of 10 or fewer prison beds).²⁷

²⁷ CJIC SB 1396-Driving Under the Influence (Identical HB 1145), January 27, 2020, on file with the Senate Committee on Criminal Justice.

The CJIC provides the following information relevant to its estimate:²⁸

Given that three or more DUI's result in felonies, it is possible that some of those diverted under this program would either take longer to reach that number due to the first offense not being a DUI or no longer drive under the influence due to the program when they would have reached that number without it. Per [Department of Corrections], in FY 18-19, there were 152 new commitments to prison who were convicted of a DUI three or more times.

Additionally, this bill may have a negative fiscal impact on the DHSMV because they must establish a statewide database of persons who participate in the pilot program. The DHSMV has not provided an analysis for this bill.

VI. Technical Deficiencies:

This bill contains language that may need clarification or may not be consistent with current law.

Lines 63-64, 77-78, 80-81, 101-02, 104-05, which reference blood and breath alcohol levels may need to clarify the blood and breath-alcohol levels, and to read consistently with s. 316.193, F.S. Section 316.193, F.S., reads, “[t]he person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or [t]he person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.”

Lines 72-75, which reference substances that a person may not possess or consume during the pilot program may need clarification and a reference to current law prohibiting such substances.

Lines 89-90, which reference fines and standard costs may need clarification.

Lines 124-131, which provide that a person who completes the pilot program must be offered a plea agreement for a reckless driving with adjudication withheld, may need to clarify the terms associated with such plea agreement. As written, the offer may include further probation associated with the plea agreement.

This bill does not address whether or not a defendant waives his right to speedy trial. A requirement of a written agreement between the State and defendant, which includes a knowing and intelligent waiver of the defendant's right to speedy trial during the period of diversion, would permit the defendant to participate in the pilot program while tolling his or her right to speedy trial.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 316.19395 of the Florida Statutes.

²⁸ *Id.*

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.

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