



**Driving Under the Influence (DUI)**

The offense of DUI<sup>1</sup> is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent the person's normal faculties are impaired;
- The person has a BAL of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a BAL of 0.08 or more grams of alcohol per 210 liters of breath.

The DUI offense is punishable as follows:<sup>2</sup>

- For a first conviction, by a fine of not less than \$250 or more than \$500 and by imprisonment for not more than 6 months.
- For a second conviction, by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.<sup>3</sup>
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than \$1000 or more than \$2500 and by imprisonment for not more than 12 months.<sup>4</sup>

A third conviction for an offense occurring within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail<sup>5</sup> and up to five years in prison and a fine of up to \$1000.<sup>6</sup> A fourth conviction, 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 \$1000 or more than \$5000.<sup>7</sup> If the fourth or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.<sup>8</sup>

At the judge's discretion, a defendant may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced in a residential alcoholism treatment program or a residential drug abuse treatment program.<sup>9</sup> Current law also requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles for various periods of time based on the number of DUI convictions.

This section requires the revocation of a driver's license:

- for not less than 180 days and no more than 1 year for a first DUI conviction;<sup>10</sup>

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<sup>1</sup>s. 316.193(1), F.S.

<sup>2</sup>s. 316.193(2), F.S.

<sup>3</sup>s. 316.193(6)(b), F.S.

<sup>4</sup>s. 316.193(2)(b)2, F.S.

<sup>5</sup>s. 316.193(6)(c), F.S.

<sup>6</sup>s. 316.193(2)(b)1, F.S.

<sup>7</sup>s. 316.193(2)(b)3., F.S.

<sup>8</sup>s. 316.193(6)(c), F.S.

<sup>9</sup>s. 316.193(6)(k), F.S.

<sup>10</sup>s. 322.28(2)(a)1., F.S.

- for not less than 5 years for a second conviction for an offense that occurs within 5 years after the date of a prior conviction;<sup>11</sup> and
- for not less than 10 years for a third conviction for an offense that occurs within 10 years of a prior conviction.<sup>12</sup>

A fourth DUI conviction results in permanent revocation of a person's driving privilege.<sup>13</sup>

### **Ignition Interlock Devices (IID)**

An IID is a mechanism similar to a breathalyzer which is installed in a vehicle's dashboard. Before the vehicle can be started, the driver must breathe into the device. If the analyzed BAL is over .05%, the vehicle will not start.

Section 316.193, F.S., requires an IID to be installed on the vehicles of certain persons convicted of DUI when they qualify for a permanent or restricted driver's license. Upon a first DUI conviction, no IID is required unless the person had a BAL of 0.20 percent or higher, or was accompanied by a minor at the time of the infraction. If these conditions are met, the court is mandated to require the placement of an IID for up to six months. Upon a second DUI conviction, the law requires the placement of an IID on all vehicles owned or leased by the offender for at least one year regardless of the violator's BAL or whether a minor was present in the vehicle. Upon a third DUI conviction, the court must order an IID to be installed for at least 2 years. The IID must be of a type approved by the Department of Highway Safety and Motor Vehicles (department) and must be placed and maintained at the offender's sole expense. Additionally, the offender is not permitted to drive any motor vehicle that does not have a functioning interlock device.

Additionally, s. 316.1937, F.S., provides a judge the option of requiring an IID for first-time offenders. The court *may* prohibit any person who is convicted of DUI in violation of s. 316.193, F.S., from operating a motor vehicle during the period of probation unless the vehicle is equipped with a functioning IID. However, the court *is required* to order the placement of an IID in those circumstances required by s. 316.193, F.S. Specifically, the court must order the placement of an interlock device for up to 6 months for a first DUI offense and for up to 2 years for a second DUI offense:

- Where the violator had a BAL of 0.20 or higher; or
- If a passenger under 18 years of age is present in the vehicle.

Violation of the conditions of s. 316.1937, F.S., will result in the revocation of the offender's driving privilege and imposition of a fine. If the court imposes the use of an IID, the court must: (1) stipulate on the record the requirement for, and the period of, the use of a certified IID; (2) order the records of the department reflect such requirement; (3) order an IID be installed, as the court may determine necessary, on any vehicle owned or operated by the convicted person; (4) determine the convicted person's ability to pay for installation of the device if the person claims inability to pay; and (5) require proof of installation of the device and periodic reporting to the department for verification of the operation of the device in the convicted person's vehicle. The

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<sup>11</sup>s. 322.28(2)(a)2., F.S.

<sup>12</sup>s. 322.28(2)(a)3., F.S.

<sup>13</sup>s. 322.28(2)(e), F.S.

law does provide indigency guidelines. If the court determines the convicted person is unable to pay for the installation of the IID, the court may order a portion of the fine paid by the person for a violation of s. 316.193, F.S., be allocated to defray the costs of installing the device. (See s. 316.1937(2)(d), F.S.) Section 316.1938, F.S., requires the department to certify the accuracy and precision of IIDs.

Pursuant to s. 316.193(2) and (4), F.S., the IID penalties for DUI and for DUI with a blood alcohol level of 0.20 or higher, or when the driver was accompanied in the vehicle with a person under the age of 18 are summarized in the chart as follows:

**Ignition Interlock Device Penalties for DUI based on Convictions**

DUI Conviction	IID Requirement
1st Conviction	Optional – Up to 6 months if court ordered
1st Conviction if 0.20 BAL or w/Minor in Car	Required - Up to 6 months
2nd Conviction	Required - At least 1 year
2nd Conviction if 0.20 BAL or w/Minor in Car	Required - At least 2 years
3rd Conviction	Required - At least 2 years

Section 322.271(2)(d), F.S., provides the department, based upon review of the licensee’s application for reinstatement, may require the uses of an IID under s. 316.1937, F.S.

The current IID program has been in place since February 1, 2004. Two IID vendors have been contracted by DHSMV to install, inspect and service the ignition interlock devices in Florida. “Interlock Systems of Florida” is the vendor for south Florida counties and has eight installation locations. “Interlock Group of Florida” is the vendor for north Florida counties and has eight installation locations. The ignition device is programmed to require routine servicing at 30 to 60 day intervals. However, events involving misuse or non-compliance with program conditions may cause the service date to advance automatically. Service requirements must be strictly complied with; otherwise the interlock device will not allow the vehicle to be started, even if no alcohol is detected. As of March 5, 2007, there were 4,580 people across the state currently enrolled in the ignition interlock device program. According to the department, since the program began on February 1, 2004, there have been 9,093 people to successfully complete the program requirements. This population has a 2.95 percent overall recidivism rate, with 36 receiving a DUI during the program and 232 receiving a DUI after the program. Some 997 people have quit the program since February 1, 2004. This population has a 5.42 percent overall recidivism rate. When a person prematurely quits the ignition interlock device program, their license is suspended until the remainder of the required time in the program is completed.

**III. Effect of Proposed Changes:**

The bill amends s. 316.193(2), F.S., to mandate the placement of an IID for at least one year in each vehicle routinely operated by persons with first-time convictions of DUI. Section 316.193(4), F.S., is amended to mandate the placement of an IID for at least two years in each vehicle routinely operated by persons convicted of DUI when the violator’s blood alcohol level was at 0.20 percent or higher, or when a minor was present in the vehicle at the time of the offense.

DUI Conviction	IID Requirement
1st Conviction	Required – At least 1 year
1st Conviction if 0.20 BAL or w/Minor in Car	Required – At least 2 years
2nd Conviction	Required - At least 1 year
2nd Conviction if 0.20 BAL or w/Minor in Car	Required - At least 2 years
3rdConviction	Required - At least 2 years

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 316.193, F.S., requires the cost of IID placement to be at the sole expense of the convicted person. The cost to install an IID is \$70, plus tax. The offender must also pay a \$100 refundable deposit or a \$5 monthly insurance charge, as well as a \$67.50 monthly fee for monitoring and calibration. However, if the court determines the convicted person is unable to pay for the installation of the device, the court may order a portion of the fine paid by the person for the DUI violation be allocated to defray the costs of installing the device.<sup>14</sup>

C. Government Sector Impact:

According to the department estimates, this bill will result in more than 41,000 additional IID placements which will require monitoring. The department estimates the additional workload related to this bill would require 7 Operations Analyst I positions and one supervisor at the level of Operations and Management Consultant II. The total salaries and benefits request would be \$281,838 for one year. Additionally, the department has reported that office space is currently not available for these positions and may need to be leased.

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<sup>14</sup> s.316.1937(2)(d), F.S.

**VI. Technical Deficiencies:**

Section 322.271, F.S., provides the department independent authority to require IID placement based on the review of a licensee’s application for reinstatement of a driver’s license. Section 322.2715, F.S., contains provisions for administratively-required IID placement which are for different durations than those established in this bill.

DUI Conviction	IID Requirement	
	S.322.2715, F.S.	SB 1670 (s. 316.193, F.S.)
1st Conviction	Not required	At least 1 year
1st Conviction if 0.20 BAL or w/Minor in Car	6 months	At least 2 years
2nd Conviction	At least 1 year	At least 1 year
2nd Conviction if 0.20 BAL or w/Minor in Car	At least 2 years	At least 2 years
3rd Conviction	At least 2 years	At least 2 years

The department recommends the effective date be changed to October 1, 2007 to allow time for programming the revocation notice for first time DUI offenders.

**VII. Related Issues:**

None.

## VIII. Summary of Amendments:

**Barcode 571252 by Transportation** – Revises the requirement to place an IID in the vehicles of all first-time DUI offenders for at least one year. Under the provisions of the amendment, first-time offenders who have been referred to a substance abuse treatment provider are required to use an IID for at least six months.

**Barcode 281452 by Transportation** – Removes obsolete language.

**Barcode 185130 by Transportation** - Revises the requirement to place an IID in the vehicles of first-time DUI offenders for at least two years when the offender's BAL was 0.20 or higher, or a minor was present in the vehicle at the time of the violation. The amendment requires first-time offenders to use an IID for up to 1 year for a first offense under those conditions.