

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/CS/SB 138

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee;
and Senator Wright

SUBJECT: Driving and Boating Offenses

DATE: March 7, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 138 makes multiple changes to strengthen and enhance crimes related to driving and boating offenses.

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 provides enhanced criminal penalties for a violation of driving under the influence (DUI) with death, if the person has a prior conviction for a violation of specified provisions.

The bill amends s. 782.071, F.S., to provide enhanced criminal penalties for a violation of vehicular homicide if the person has a prior conviction for a violation of specified provisions.

Currently, a first time conviction for DUI with death¹ or vehicular homicide² is a felony in the second degree.³

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 misdemeanor⁴ or a first degree misdemeanor⁵ under certain circumstances.

The bill creates s. 316.19395, F.S., to authorize judicial circuits to create DUI diversion programs.

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 a third degree felony offense of driving on license suspended upon a third or subsequent violation, if the suspension was related to DUI 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 has an indeterminate state prison bed 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 a DUI 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;⁶

¹ Section 316.193(3)(c)3., F.S.

² Section 782.071, F.S.

³ A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine up to \$10,000, as provided in ss. 775.082, 775.083, or 775.084, F.S.

⁴ 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.

⁵ 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.

⁶ Section 316.193(1)(a), F.S.

- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood;⁷ or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.⁸

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.⁹

The penalties for a first time DUI offense are:

- A period of probation not exceeding one year;
- A fine of not less than \$500 or more than \$2,000;
- Imprisonment for not more than nine months;
- A mandatory minimum of 50 hours of community service; and
- A mandatory ten-day vehicle impoundment.¹⁰

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.¹¹

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.¹² The penalties for a first time boating under the influence offense are:

- A fine of not less than \$500 or more than \$2,000 for a first conviction.
- Imprisonment for not more than nine months;
- A period of probation not exceeding one year;
- A mandatory minimum of 50 hours of community service; and a mandatory 10-day vessel impoundment or immobilization.¹³

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.¹⁴

⁷ Section 316.193(1)(b), F.S.

⁸ Section 316.193(1)(c), F.S.

⁹ Section 316.193, F.S.

¹⁰ *Id.*

¹¹ Section 327.35

¹² *Id.*

¹³ *Id.*

¹⁴ Sections 316.1932 (1)(a)1.a., and 327.352(1)(a)1., F.S.

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.¹⁵

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, F.S.¹⁶ 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 \$500.¹⁷

As a result of a refusal to submit to a test or tests required under ch. 316, F.S., 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.¹⁸

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.¹⁹

Vehicular Homicide

Vehicular homicide is the killing of a human being, or the killing of an unborn child by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.²⁰ Vehicular homicide is a second degree felony.²¹

The degree of culpability required for vehicular homicide is less than that necessary to prove manslaughter, but it is more than a mere failure to use ordinary care.²²

¹⁵ *Id.*

¹⁶ 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.

¹⁷ Section 327.352, F.S.

¹⁸ 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.

¹⁹ Section 316.1932(1)(a)b., F.S.

²⁰ Section 782.071, F.S.

²¹ Section 782.071 (1)(a), F.S.

²² *McCreary v. State*, 371 So.2d 1024, 1026 (Fla.1979)

To prove the offense, the state must also prove the elements of reckless driving, which itself requires proof of a “willful or wanton disregard for the safety of persons or property.”²³

The term “willful” means “intentional, knowing, and purposeful,” and the term “wanton” means with a “conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.”²⁴

The court has stated “[i]n determining whether a defendant was driving recklessly, the essential inquiry is whether the defendant knowingly drove the vehicle in such a manner and under such conditions as was likely to cause death or great bodily harm.”²⁵

Search Warrants

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;²⁶
- When any property has been used:
 - As a means to commit any crime;²⁷
 - In connection with gambling, gambling implements and appliances;²⁸ or
 - In violation of s. 847.11, F.S., or other laws in reference to obscene prints and literature;²⁹
- When any property constitutes evidence relevant to proving that a felony has been committed;³⁰
- When property is being held or possessed:
 - In violation of any laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;³¹
 - In violation of the fish and game laws;³²
 - In violation of the laws relative to food and drug;³³ or
 - In violation of the laws relative to citrus disease pursuant to s. 581.184, F.S.;³⁴ 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.³⁵

²³ *Santisteban v. State*, 72 So.3d 187, 195 (Fla. 4th DCA 2011); *Berube v. State*, 6 So.3d 624, 625 (Fla. 5th DCA 2008); see also § 316.192(1), Fla. Stat. (2010).

²⁴ *Lewek v. State*, 702 So.2d 527, 530–31 (Fla. 4th DCA 1997) (quoting Fla. Std. Jury. Instr. (Misd.) (**reckless** driving)).

²⁵ *Santisteban*, 72 So.3d at 195 (citing *D.E. v. State*, 904 So.2d 558, 562 (Fla. 5th DCA 2005)).

²⁶ Section 933.02(1), F.S.

²⁷ Section 933.02(2)(a), F.S.

²⁸ Section 933.02(2)(b), F.S.

²⁹ Section 933.02(2)(c), F.S.

³⁰ Section 933.02(3), F.S.

³¹ Section 933.02(4)(a), F.S.

³² Section 933.02(4)(b), F.S.

³³ Section 933.02(4)(c), F.S.

³⁴ Section 933.02(4)(d), F.S.

³⁵ Section 933.02(5), F.S.

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.³⁶ Under the existing language, property *constituting relevant evidence* may be seized only if the suspected crime is a *felony*.^{37 38}

III. Effect of Proposed Changes:

The bill names the Act “Trenton’s Law.”

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. 319.193(3)(c)3., F.S., to provide an enhanced criminal penalty of a first degree felony for a violation of DUI with death if the person has a prior conviction for a violation of DUI with death or a prior conviction for vehicular homicide.

The bill amends s. 782.071, F.S., to provide an enhanced criminal penalty of a first degree felony for a violation of vehicular homicide if the person has a prior conviction for DUI causing death or a prior conviction for vehicular homicide. Currently, a first-time conviction for DUI with death³⁹ or vehicular homicide is a felony in the second degree.

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 misdemeanor⁴⁰ or a first degree misdemeanor⁴¹ 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.

³⁶ Section 933.02(2)(a), F.S.

³⁷ Section 933.02(3), F.S.

³⁸ *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).

³⁹ Section 316.193(3)(c)3., F.S.

⁴⁰ 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.

⁴¹ 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.

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

The bill creates s. 316.19395, F.S., to authorize judicial circuits to create a DUI 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 Highway Safety and Motor Vehicles (DSHVM) of each person who successfully completes the program. The DSHVM 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 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 s. 316.193, F.S., relating to DUI or s. 327.35, F.S., relating to boating under the influence, has been committed.

The bill takes effect 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 Office of Economic and Demographic Research (EDR) issued a preliminary estimate of the bill and cited a positive indeterminate impact on prison beds due to the enhancement of criminal penalties and the expansion of the criteria for impairment.⁴² Additionally, the bill creates a new misdemeanor charge for refusal to submit to a breath test which may create additional revenue through court fines and fees and, therefore, the bill may have a positive indeterminate impact on state and local revenue.

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. The effect on judicial 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.

VI. Technical Deficiencies:

None.

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, 782.071, and 933.02.

This bill creates section 316.19395 of the Florida Statutes.

⁴² Office of Economic and Demographic Research, *SB 138 Preliminary Estimate*, (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Criminal and Civil Justice on March 5, 2025:

The committee substitute [insert text]

CS by Criminal Justice on February 11, 2025:

The committee substitute:

- Provides that it is a first degree felony if a person commits a DUI with death and has a prior conviction for DUI with death or a prior conviction for vehicular homicide.
- Provides that this Act shall be designated as “Trenton’s Law”.
- Provides that it is a first degree felony if a person commits vehicular homicide and has a prior conviction for DUI with death or a prior conviction for vehicular homicide.

- B. **Amendments:**

None.