

By Senator Klein

28-672-98

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A bill to be entitled
An act relating to driving under the influence;
amending s. 316.193, F.S.; deleting a provision
that prohibits the court from sentencing a
person convicted of driving under the influence
to a term of probation which is concurrent with
the period during which the person's vehicle is
impounded or immobilized; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 316.193, Florida
Statutes, is reenacted, and subsection (6) of that section is
amended to read:

316.193 Driving under the influence; penalties.--

(1) A person is guilty of the offense of driving under
the influence and is subject to punishment as provided in
subsection (2) if the person is driving or in actual physical
control of a vehicle within this state and:

(a) The person is under the influence of alcoholic
beverages, any chemical substance set forth in s. 877.111, or
any substance controlled under chapter 893, when affected to
the extent that the person's normal faculties are impaired;

(b) The person has a blood-alcohol level of 0.08 or
more grams of alcohol per 100 milliliters of blood; or

(c) The person has a breath-alcohol level of 0.08 or
more grams of alcohol per 210 liters of breath.

(6) With respect to any person convicted of a
violation of subsection (1), regardless of any penalty imposed
pursuant to subsection (2), subsection (3), or subsection (4):

1 (a) For the first conviction, the court shall place
2 the defendant on probation for a period not to exceed 1 year
3 and, as a condition of such probation, shall order the
4 defendant to participate in public service or a community work
5 project for a minimum of 50 hours; or the court may order
6 instead, that any defendant pay an additional fine of \$10 for
7 each hour of public service or community work otherwise
8 required, if, after consideration of the residence or location
9 of the defendant at the time public service or community work
10 is required, payment of the fine is in the best interests of
11 the state. However, the total period of probation and
12 incarceration may not exceed 1 year.

13 (b) For the second conviction for an offense that
14 occurs within a period of 5 years after the date of a prior
15 conviction for violation of this section, the court shall
16 order imprisonment for not less than 10 days. At least 48
17 hours of confinement must be consecutive.

18 (c) For the third or subsequent conviction for an
19 offense that occurs within a period of 10 years after the date
20 of a prior conviction for violation of this section, the court
21 shall order imprisonment for not less than 30 days. At least
22 48 hours of confinement must be consecutive.

23 (d) In addition to the penalty imposed under paragraph
24 (a), paragraph (b), or paragraph (c), the court shall also
25 order the impoundment or immobilization of the vehicle that
26 was driven by, or in the actual physical control of, the
27 offender, unless the court finds that the family of the owner
28 of the vehicle has no other public or private means of
29 transportation. The period of impoundment or immobilization is
30 10 days, or, for a ~~the~~ second conviction within 3 years, 30
31 days, or, for a ~~the~~ third conviction within 5 years, 90 days,

1 and may not be concurrent with ~~probation or~~ imprisonment. If
2 the vehicle is leased or rented, the period of impoundment or
3 immobilization may not extend beyond the expiration of the
4 lease or rental agreement. Within 7 business days after the
5 date that the court issues the order of impoundment or
6 immobilization, the clerk of the court shall send notice by
7 certified mail, return receipt requested, to the registered
8 owner of the vehicle if the registered owner is a person other
9 than the offender and to each person of record claiming a lien
10 against the vehicle. All costs and fees for the impoundment or
11 immobilization, including the cost of notification, must be
12 paid by the owner of the vehicle or, if the vehicle is leased
13 or rented, by the person leasing or renting the vehicle. The
14 person who owns a vehicle that is impounded or immobilized
15 under this paragraph, or a person who has a lien of record
16 against such a vehicle, may, within 10 days after the date
17 that person has knowledge of the location of the vehicle, file
18 a complaint in the county in which the owner resides to
19 determine whether the vehicle was wrongfully taken or withheld
20 from the owner or lienholder. Upon the filing of a complaint,
21 the owner or lienholder may have the vehicle released by
22 posting with the court a bond or other adequate security equal
23 to the amount of the costs and fees for impoundment or
24 immobilization, including towing or storage, to ensure the
25 payment of such costs and fees if the owner or lienholder does
26 not prevail. When the bond is posted and the fee is paid as
27 set forth in s. 28.24, the clerk of the court shall issue a
28 certificate releasing the vehicle. At the time of release,
29 after reasonable inspection, the owner or lienholder must give
30 a receipt to the towing or storage company indicating any loss
31 or damage to the vehicle or to the contents of the vehicle.

1 (e) A defendant, in the court's discretion, may be
2 required to serve all or any portion of a term of imprisonment
3 to which the defendant has been sentenced pursuant to this
4 section in a residential alcoholism treatment program or a
5 residential drug abuse treatment program. Any time spent in
6 such a program must be credited by the court toward the term
7 of imprisonment.

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9 For the purposes of this section, any conviction for a
10 violation of s. 327.35; a previous conviction for the
11 violation of former s. 316.1931, former s. 860.01, or former
12 s. 316.028; or a previous conviction outside this state for
13 driving under the influence, driving while intoxicated,
14 driving with an unlawful blood-alcohol level, driving with an
15 unlawful breath-alcohol level, or any other similar
16 alcohol-related or drug-related traffic offense, is also
17 considered a previous conviction for violation of this
18 section. However, in satisfaction of the fine imposed pursuant
19 to this section, the court may, upon a finding that the
20 defendant is financially unable to pay either all or part of
21 the fine, order that the defendant participate for a specified
22 additional period of time in public service or a community
23 work project in lieu of payment of that portion of the fine
24 which the court determines the defendant is unable to pay. In
25 determining such additional sentence, the court shall consider
26 the amount of the unpaid portion of the fine and the
27 reasonable value of the services to be ordered; however, the
28 court may not compute the reasonable value of services at a
29 rate less than the federal minimum wage at the time of
30 sentencing.

31 Section 2. This act shall take effect July 1, 1998.

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SENATE SUMMARY

Deletes a provision that provides that the term of vehicle impoundment for a person convicted of driving under the influence may not be concurrent with the person's term of probation.