

By Representatives Dockery, Alexander, Argenziano, Hart,
C. Green and Kyle

1 A bill to be entitled
2 An act relating to offenses of driving under
3 the influence; amending s. 316.193, F.S.;
4 providing an exception to the 1-year maximum
5 limitation upon the period of probation and
6 incarceration imposed for a first conviction;
7 permitting extension of the probationary period
8 for up to 4 additional years when the defendant
9 has not completed restitution payments;
10 reenacting s. 316.072(4)(b), F.S., relating to
11 obedience to and effect of traffic laws, s.
12 316.1937(1) and (2)(d), F.S., relating to
13 court-required use of ignition interlock
14 devices, s. 318.143, F.S., relating to
15 sanctions for infractions by minors, s.
16 322.0602(2), F.S., relating to Youthful Drunk
17 Driver Visitation Program, s. 322.271(4)(a),
18 F.S., relating to authority to modify
19 revocation, cancellation, or suspension order,
20 s. 938.21, F.S., relating to alcohol and drug
21 abuse programs, and s. 938.23(1), F.S.,
22 relating to assistance grants for alcohol and
23 other drug abuse programs, to incorporate said
24 amendment in references; providing an effective
25 date.

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

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29 Section 1. Paragraph (a) of subsection (6) of section
30 316.193, Florida Statutes, 1998 Supplement, is amended to
31 read:

1 316.193 Driving under the influence; penalties.--
2 (6) With respect to any person convicted of a
3 violation of subsection (1), regardless of any penalty imposed
4 pursuant to subsection (2), subsection (3), or subsection (4):
5 (a) For the first conviction, the court shall place
6 the defendant on probation for a period not to exceed 1 year
7 and, as a condition of such probation, shall order the
8 defendant to participate in public service or a community work
9 project for a minimum of 50 hours; or the court may order
10 instead, that any defendant pay an additional fine of \$10 for
11 each hour of public service or community work otherwise
12 required, if, after consideration of the residence or location
13 of the defendant at the time public service or community work
14 is required, payment of the fine is in the best interests of
15 the state. However, the total period of probation and
16 incarceration may not exceed 1 year, unless restitution is
17 still owed. The probationary period may be extended for up to
18 4 additional years for the purpose of the defendant's
19 completing payment of restitution. The court must also, as a
20 condition of probation, order the impoundment or
21 immobilization of the vehicle that was operated by or in the
22 actual control of the defendant or any one vehicle registered
23 in the defendant's name at the time of impoundment or
24 immobilization, for a period of 10 days or for the unexpired
25 term of any lease or rental agreement that expires within 10
26 days. The impoundment or immobilization must not occur
27 concurrently with the incarceration of the defendant. The
28 impoundment or immobilization order may be dismissed in
29 accordance with paragraph (e), paragraph (f), or paragraph
30 (g).
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1 For the purposes of this section, any conviction for a
2 violation of s. 327.35; a previous conviction for the
3 violation of former s. 316.1931, former s. 860.01, or former
4 s. 316.028; or a previous conviction outside this state for
5 driving under the influence, driving while intoxicated,
6 driving with an unlawful blood-alcohol level, driving with an
7 unlawful breath-alcohol level, or any other similar
8 alcohol-related or drug-related traffic offense, is also
9 considered a previous conviction for violation of this
10 section. However, in satisfaction of the fine imposed pursuant
11 to this section, the court may, upon a finding that the
12 defendant is financially unable to pay either all or part of
13 the fine, order that the defendant participate for a specified
14 additional period of time in public service or a community
15 work project in lieu of payment of that portion of the fine
16 which the court determines the defendant is unable to pay. In
17 determining such additional sentence, the court shall consider
18 the amount of the unpaid portion of the fine and the
19 reasonable value of the services to be ordered; however, the
20 court may not compute the reasonable value of services at a
21 rate less than the federal minimum wage at the time of
22 sentencing.

23 Section 2. For the purpose of incorporating the
24 amendment to s. 316.193(6)(a) in references thereto, the
25 following sections or subdivisions of Florida Statutes, or of
26 Florida Statutes, 1998 Supplement, are reenacted to read:

27 316.072 Obedience to and effect of traffic laws.--

28 (4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY CHAPTER;
29 EXCEPTIONS.--

30 (b) Unless specifically made applicable, the
31 provisions of this chapter, except those contained in ss.

1 316.192, 316.1925, and 316.193, shall not apply to persons,
2 teams, or motor vehicles and other equipment while actually
3 engaged in work upon the surface of a highway, but shall apply
4 to such persons and vehicles when traveling to or from such
5 work.

6 316.1937 Ignition interlock devices, requiring;
7 unlawful acts.--

8 (1) In addition to any other authorized penalties, the
9 court may require that any person who is convicted of driving
10 under the influence in violation of s. 316.193, and who is
11 granted probation, shall not operate a motor vehicle during
12 the period of probation unless that vehicle is equipped with a
13 functioning ignition interlock device certified by the
14 department as provided in s. 316.1938, and installed in such a
15 manner that the vehicle will not start if the operator's blood
16 alcohol level is in excess of 0.05 percent or as otherwise
17 specified by the court. The court may require the use of an
18 approved ignition interlock device for the period of
19 probation, said period to be for not less than 6 months, if
20 the person is permitted to operate a motor vehicle, whether
21 the privilege to operate a motor vehicle is restricted or not,
22 as determined by the court.

23 (2) If the court imposes the use of an ignition
24 interlock device as a condition of probation, the court shall:

25 (d) Determine the probationer's ability to pay for
26 installation of the device if the probationer claims inability
27 to pay. If the court determines that the probationer is
28 unable to pay for installation of the device, the court may
29 order that any portion of a fine paid by the probationer for a
30 violation of s. 316.193 shall be allocated to defray the costs
31 of installing the device.

1 318.143 Sanctions for infractions by minors.--

2 (1) If the court finds that a minor has committed a
3 violation of any of the provisions of chapter 316, the court
4 may also impose one or more of the following sanctions:

5 (a) The court may reprimand or counsel the minor and
6 his or her parents or guardian.

7 (b) The court may require the minor to attend, for a
8 reasonable period, a traffic school conducted by a public
9 authority.

10 (c) The court may order the minor to remit to the
11 general fund of the local governmental body a sum not
12 exceeding the maximum fine applicable to an adult for a like
13 offense.

14 (d) The court may order the minor to participate in
15 public service or a community work project for a minimum
16 number of hours. A minor who participates in such a work
17 program is considered an employee of the state for the
18 purposes of chapter 440.

19 (e) The court may impose a curfew or other restriction
20 on the liberty of the minor for a period not to exceed 6
21 months.

22 (2) Failure to comply with one or more of the
23 sanctions imposed by the court constitutes contempt of court.
24 Upon a finding by the court, after notice and a hearing, that
25 a minor is in contempt of court for failure to comply with
26 court-ordered sanctions, the court may:

27 (a) For a first offense, order the minor to serve up
28 to 5 days in a staff-secure shelter as defined in chapter 984
29 or chapter 985 or, if space in a staff-secure shelter is
30 unavailable, in a secure juvenile detention center.

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1 (b) For a second or subsequent offense, the court may
2 order a minor to serve up to 15 days in a staff-secure shelter
3 or, if space in a staff-secure shelter is unavailable, in a
4 secure juvenile detention center.

5 (3) Except for a conviction of a violation of s.
6 316.027, a minor may not be imprisoned in an adult detention
7 facility. If a minor is imprisoned for a violation of s.
8 316.027, the minor may not be placed in the same cell as an
9 adult. The receiving facility must have adequate staff to
10 supervise and monitor the minor's activities at all times.
11 This subsection does not prohibit placing two or more minors
12 in the same cell.

13 (4) For the first conviction for a violation of s.
14 316.193, the court may order the Department of Highway Safety
15 and Motor Vehicles to revoke the minor's driver's license
16 until the minor is 18 years of age. For a second or subsequent
17 conviction for such a violation, the court may order the
18 Department of Highway Safety and Motor Vehicles to revoke the
19 minor's driver's license until the minor is 21 years of age.

20 (5) A minor who is arrested for a violation of s.
21 316.193 may be released from custody as soon as:

22 (a) The minor is no longer under the influence of
23 alcoholic beverages, of any chemical substance set forth in s.
24 877.111, or of any substance controlled under chapter 893, and
25 is not affected to the extent that his or her normal faculties
26 are impaired;

27 (b) The minor's blood-alcohol level is less than 0.05
28 percent; or

29 (c) Six hours have elapsed after the minor's arrest.

30 322.0602 Youthful Drunk Driver Visitation Program.--

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1 (2) COURT-ORDERED PARTICIPATION IN PROGRAM; PREFERENCE
2 FOR PARTICIPATION.--

3 (a) If a person is convicted of a violation of s.
4 316.193, the court may order, as a term and condition of
5 probation in addition to any other term or condition required
6 or authorized by law, that the probationer participate in the
7 Youthful Drunk Driver Visitation Program.

8 (b) The court shall give preference for participation
9 in the program to probationers who are less than 18 years of
10 age at the time of the offense if the facilities which
11 participate in the program within the jurisdiction cannot
12 accommodate all probationers who are eligible and who consent
13 to participate in the program.

14 322.271 Authority to modify revocation, cancellation,
15 or suspension order.--

16 (4) Notwithstanding the provisions of s. 322.28(2)(e),
17 a person whose driving privilege has been permanently revoked
18 because he or she has been convicted of DUI manslaughter in
19 violation of s. 316.193 and has no prior convictions for
20 DUI-related offenses may, upon the expiration of 5 years after
21 the date of such revocation or the expiration of 5 years after
22 the termination of any term of incarceration under s. 316.193
23 or former s. 316.1931, whichever date is later, petition the
24 department for reinstatement of his or her driving privilege.

25 (a) Within 30 days after the receipt of such a
26 petition, the department shall afford the petitioner an
27 opportunity for a hearing. At the hearing, the petitioner
28 must demonstrate to the department that he or she:

29 1. Has not been arrested for a drug-related offense
30 during the 5 years preceding the filing of the petition;

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1 2. Has not driven a motor vehicle without a license
2 for at least 5 years prior to the hearing;

3 3. Has been drug-free for at least 5 years prior to
4 the hearing; and

5 4. Has completed a DUI program licensed by the
6 department.

7 938.21 Alcohol and drug abuse
8 programs.--Notwithstanding any provision to the contrary of
9 the laws of this state, the court may assess for alcohol and
10 other drug abuse programs as provided in s. 893.165 any
11 defendant who pleads guilty or nolo contendere to, or is
12 convicted of, a violation of any provision of chapter 893 or
13 which involves a criminal violation of s. 316.193, s. 856.011,
14 s. 856.015, or chapter 562, chapter 567, or chapter 568, in
15 addition to any fine and other penalty provided by law, a
16 court cost in an amount up to the amount of the fine
17 authorized for the violation. The court is authorized to order
18 a defendant to pay an additional assessment if it finds that
19 the defendant has the ability to pay the fine and the
20 additional assessment and will not be prevented thereby from
21 being rehabilitated or from making restitution.

22 938.23 Assistance grants for alcohol and other drug
23 abuse programs.--

24 (1) In addition to any fine imposed by law for any
25 criminal offense under chapter 893 or for any criminal
26 violation of s. 316.193, s. 856.011, s. 856.015, or chapter
27 562, chapter 567, or chapter 568, the court shall be
28 authorized, pursuant to the requirements of s. 938.21, to
29 impose an additional assessment in an amount up to the amount
30 of the fine authorized for the offense. Such additional
31 assessments shall be deposited for the purpose of providing

1 assistance grants to drug abuse treatment or alcohol treatment
2 or education programs as provided in s. 893.165.

3 Section 3. This act shall take effect July 1, 1999.

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6 HOUSE SUMMARY

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8 Provides an exception to the 1-year maximum limitation
9 upon the total period of probation and incarceration
10 imposed for a first conviction for driving under the
influence. Permits extension of the probationary period
for up to 4 additional years when the defendant has not
completed restitution payments.

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