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A bill to be entitled
 An act relating to driving under the influence; amending
 s. 316.193, F.S.; providing for using certain records of
 the Department of Highway Safety and Motor Vehicles as
 evidence establishing existence of certain previous
 violations; providing for rebutting or contradicting of
 such evidence; providing an effective date.

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

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

316.193 Driving under the influence; penalties.--

(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):

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

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30 operated by or in the actual control of the defendant or any one
31 vehicle registered in the defendant's name at the time of
32 impoundment or immobilization, for a period of 10 days or for
33 the unexpired term of any lease or rental agreement that expires
34 within 10 days. The impoundment or immobilization must not occur
35 concurrently with the incarceration of the defendant. The
36 impoundment or immobilization order may be dismissed in
37 accordance with paragraph (e), paragraph (f), paragraph (g), or
38 paragraph (h).

39 (b) For the second conviction for an offense that occurs
40 within a period of 5 years after the date of a prior conviction
41 for violation of this section, the court shall order
42 imprisonment for not less than 10 days. The court must also, as
43 a condition of probation, order the impoundment or
44 immobilization of all vehicles owned by the defendant at the
45 time of impoundment or immobilization, for a period of 30 days
46 or for the unexpired term of any lease or rental agreement that
47 expires within 30 days. The impoundment or immobilization must
48 not occur concurrently with the incarceration of the defendant
49 and must occur concurrently with the driver's license revocation
50 imposed under s. 322.28(2)(a)2. The impoundment or
51 immobilization order may be dismissed in accordance with
52 paragraph (e), paragraph (f), paragraph (g), or paragraph (h).
53 At least 48 hours of confinement must be consecutive.

54 (c) For the third or subsequent conviction for an offense
55 that occurs within a period of 10 years after the date of a
56 prior conviction for violation of this section, the court shall
57 order imprisonment for not less than 30 days. The court must
58 also, as a condition of probation, order the impoundment or

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59 immobilization of all vehicles owned by the defendant at the
60 time of impoundment or immobilization, for a period of 90 days
61 or for the unexpired term of any lease or rental agreement that
62 expires within 90 days. The impoundment or immobilization must
63 not occur concurrently with the incarceration of the defendant
64 and must occur concurrently with the driver's license revocation
65 imposed under s. 322.28(2)(a)3. The impoundment or
66 immobilization order may be dismissed in accordance with
67 paragraph (e), paragraph (f), paragraph (g), or paragraph (h).
68 At least 48 hours of confinement must be consecutive.

69 (d) The court must at the time of sentencing the defendant
70 issue an order for the impoundment or immobilization of a
71 vehicle. Within 7 business days after the date that the court
72 issues the order of impoundment or immobilization, the clerk of
73 the court must send notice by certified mail, return receipt
74 requested, to the registered owner of each vehicle, if the
75 registered owner is a person other than the defendant, and to
76 each person of record claiming a lien against the vehicle.

77 (e) A person who owns but was not operating the vehicle
78 when the offense occurred may submit to the court a police
79 report indicating that the vehicle was stolen at the time of the
80 offense or documentation of having purchased the vehicle after
81 the offense was committed from an entity other than the
82 defendant or the defendant's agent. If the court finds that the
83 vehicle was stolen or that the sale was not made to circumvent
84 the order and allow the defendant continued access to the
85 vehicle, the order must be dismissed and the owner of the
86 vehicle will incur no costs. If the court denies the request to

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87 dismiss the order of impoundment or immobilization, the
88 petitioner may request an evidentiary hearing.

89 (f) A person who owns but was not operating the vehicle
90 when the offense occurred, and whose vehicle was stolen or who
91 purchased the vehicle after the offense was committed directly
92 from the defendant or the defendant's agent, may request an
93 evidentiary hearing to determine whether the impoundment or
94 immobilization should occur. If the court finds that either the
95 vehicle was stolen or the purchase was made without knowledge of
96 the offense, that the purchaser had no relationship to the
97 defendant other than through the transaction, and that such
98 purchase would not circumvent the order and allow the defendant
99 continued access to the vehicle, the order must be dismissed and
100 the owner of the vehicle will incur no costs.

101 (g) The court shall also dismiss the order of impoundment
102 or immobilization of the vehicle if the court finds that the
103 family of the owner of the vehicle has no other private or
104 public means of transportation.

105 (h) The court may also dismiss the order of impoundment or
106 immobilization of any vehicles that are owned by the defendant
107 but that are operated solely by the employees of the defendant
108 or any business owned by the defendant.

109 (i) All costs and fees for the impoundment or
110 immobilization, including the cost of notification, must be paid
111 by the owner of the vehicle or, if the vehicle is leased or
112 rented, by the person leasing or renting the vehicle, unless the
113 impoundment or immobilization order is dismissed. All provisions
114 of s. 713.78 shall apply.

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115 (j) The person who owns a vehicle that is impounded or
116 immobilized under this paragraph, or a person who has a lien of
117 record against such a vehicle and who has not requested a review
118 of the impoundment pursuant to paragraph (e), paragraph (f), or
119 paragraph (g), may, within 10 days after the date that person
120 has knowledge of the location of the vehicle, file a complaint
121 in the county in which the owner resides to determine whether
122 the vehicle was wrongfully taken or withheld from the owner or
123 lienholder. Upon the filing of a complaint, the owner or
124 lienholder may have the vehicle released by posting with the
125 court a bond or other adequate security equal to the amount of
126 the costs and fees for impoundment or immobilization, including
127 towing or storage, to ensure the payment of such costs and fees
128 if the owner or lienholder does not prevail. When the bond is
129 posted and the fee is paid as set forth in s. 28.24, the clerk
130 of the court shall issue a certificate releasing the vehicle. At
131 the time of release, after reasonable inspection, the owner or
132 lienholder must give a receipt to the towing or storage company
133 indicating any loss or damage to the vehicle or to the contents
134 of the vehicle.

135 (k) A defendant, in the court's discretion, may be
136 required to serve all or any portion of a term of imprisonment
137 to which the defendant has been sentenced pursuant to this
138 section in a residential alcoholism treatment program or a
139 residential drug abuse treatment program. Any time spent in such
140 a program must be credited by the court toward the term of
141 imprisonment.

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143 For the purposes of this section, any conviction for a violation
144 of s. 327.35; a previous conviction for the violation of former
145 s. 316.1931, former s. 860.01, or former s. 316.028; or a
146 previous conviction outside this state for driving under the
147 influence, driving while intoxicated, driving with an unlawful
148 blood-alcohol level, driving with an unlawful breath-alcohol
149 level, or any other similar alcohol-related or drug-related
150 traffic offense, is also considered a previous conviction for
151 violation of this section. If records of the department show
152 that a person has been previously convicted of any violation of
153 this section, such records may be used as evidence to establish
154 such previous convictions. However, such evidence may be
155 contradicted or rebutted by other evidence. Such evidence may be
156 considered, together with any other evidence presented, in
157 deciding if such person has been previously convicted of a
158 violation of this section. However, in satisfaction of the fine
159 imposed pursuant to this section, the court may, upon a finding
160 that the defendant is financially unable to pay either all or
161 part of the fine, order that the defendant participate for a
162 specified additional period of time in public service or a
163 community work project in lieu of payment of that portion of the
164 fine which the court determines the defendant is unable to pay.
165 In determining such additional sentence, the court shall
166 consider the amount of the unpaid portion of the fine and the
167 reasonable value of the services to be ordered; however, the
168 court may not compute the reasonable value of services at a rate
169 less than the federal minimum wage at the time of sentencing.

170 Section 2. This act shall take effect upon becoming a law.