

By Senator Crist

12-02441C-08

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1 A bill to be entitled

2 An act relating to penalties for driving under the  
3 influence; amending s. 316.193, F.S.; requiring a court to  
4 order a defendant, after a first conviction for driving  
5 under the influence, to participate in not less than 50  
6 hours of community service as a condition of probation;  
7 authorizing a court to impose a specified fine under  
8 certain conditions; providing an exception; providing an  
9 effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13 Section 1. Subsection (6) of section 316.193, Florida  
14 Statutes, is amended to read:

15 316.193 Driving under the influence; penalties.--

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

19 (a) For the first conviction, the court shall place the  
20 defendant on probation for a period not to exceed 1 year and, as  
21 a condition of such probation, shall order the defendant to  
22 participate in public service or a community work project for a  
23 minimum of 50 hours. ~~;~~ ~~or~~ The court may order a ~~instead,~~ ~~that any~~  
24 defendant to pay an additional fine of \$10 for each hour of  
25 public service or community work otherwise required only, ~~if the~~  
26 court finds that, ~~after consideration of~~ the residence or  
27 location of the defendant at the time public service or community  
28 work is required or the defendant's employment obligations would  
29 create an undue hardship for the defendant, ~~payment of the fine~~

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30 ~~is in the best interests of the state.~~ However, the total period  
31 of probation and incarceration may not exceed 1 year. The court  
32 must also, as a condition of probation, order the impoundment or  
33 immobilization of the vehicle that was operated by or in the  
34 actual control of the defendant or any one vehicle registered in  
35 the defendant's name at the time of impoundment or  
36 immobilization, for a period of 10 days or for the unexpired term  
37 of any lease or rental agreement that expires within 10 days. The  
38 impoundment or immobilization must not occur concurrently with  
39 the incarceration of the defendant. The impoundment or  
40 immobilization order may be dismissed in accordance with  
41 paragraph (e), paragraph (f), paragraph (g), or paragraph (h).

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

57 (c) For the third or subsequent conviction for an offense  
58 that occurs within a period of 10 years after the date of a prior

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59 conviction for violation of this section, the court shall order  
60 imprisonment for not less than 30 days. The court must also, as a  
61 condition of probation, order the impoundment or immobilization  
62 of all vehicles owned by the defendant at the time of impoundment  
63 or immobilization, for a period of 90 days or for the unexpired  
64 term of any lease or rental agreement that expires within 90  
65 days. The impoundment or immobilization must not occur  
66 concurrently with the incarceration of the defendant and must  
67 occur concurrently with the driver's license revocation imposed  
68 under s. 322.28(2)(a)3. The impoundment or immobilization order  
69 may be dismissed in accordance with paragraph (e), paragraph (f),  
70 paragraph (g), or paragraph (h). At least 48 hours of confinement  
71 must be consecutive.

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

80 (e) A person who owns but was not operating the vehicle  
81 when the offense occurred may submit to the court a police report  
82 indicating that the vehicle was stolen at the time of the offense  
83 or documentation of having purchased the vehicle after the  
84 offense was committed from an entity other than the defendant or  
85 the defendant's agent. If the court finds that the vehicle was  
86 stolen or that the sale was not made to circumvent the order and  
87 allow the defendant continued access to the vehicle, the order

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88 must be dismissed and the owner of the vehicle will incur no  
89 costs. If the court denies the request to dismiss the order of  
90 impoundment or immobilization, the petitioner may request an  
91 evidentiary hearing.

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

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

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

112 (i) All costs and fees for the impoundment or  
113 immobilization, including the cost of notification, must be paid  
114 by the owner of the vehicle or, if the vehicle is leased or  
115 rented, by the person leasing or renting the vehicle, unless the

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116 impoundment or immobilization order is dismissed. All provisions  
117 of s. 713.78 shall apply.

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

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

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

165 Section 2. This act shall take effect July 1, 2008.