

By Senator Crist

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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
4 court to order a defendant, after a first conviction
5 for driving under the influence, to participate in a
6 minimum of 50 hours of community service as a
7 condition of probation; authorizing a court to impose
8 a specified fine under certain conditions; providing
9 an effective date.

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

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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 a ~~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
28 community work is required or the defendant's employment
29 obligations would create an undue hardship for the defendant,

12-00458-09

2009470__

30 ~~payment of the fine is in the best interests of the state.~~

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

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

58 (c) For the third or subsequent conviction for an offense

12-00458-09

2009470__

59 that occurs within a period of 10 years after the date of a
60 prior conviction for violation of this section, the court shall
61 order imprisonment for not less than 30 days. The court must
62 also, as a condition of probation, order the impoundment or
63 immobilization of all vehicles owned by the defendant at the
64 time of impoundment or immobilization, for a period of 90 days
65 or for the unexpired term of any lease or rental agreement that
66 expires within 90 days. The impoundment or immobilization must
67 not occur concurrently with the incarceration of the defendant
68 and must occur concurrently with the driver's license revocation
69 imposed under s. 322.28(2)(a)3. The impoundment or
70 immobilization order may be dismissed in accordance with
71 paragraph (e), paragraph (f), paragraph (g), or paragraph (h).
72 At least 48 hours of confinement must be consecutive.

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

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

12-00458-09

2009470__

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

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

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

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

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

12-00458-09

2009470__

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

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

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

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12-00458-09

2009470__

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

166 Section 2. This act shall take effect July 1, 2009.