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1 A bill to be entitled
2 An act relating to interlock ignition devices ordered
3 for probation for DUI; amending s. 316.193, F.S.;
4 requiring that the court, as a condition of probation
5 for a conviction of the offense of driving under the
6 influence, impound or immobilize the vehicle that was
7 operated by or was in the actual control of the
8 defendant or require the defendant to install an
9 interlock ignition device on all vehicles that are
10 individually or jointly leased or owned and routinely
11 operated by the defendant; prohibiting the
12 installation of an ignition interlock device from
13 occurring concurrently with the incarceration of the
14 defendant; providing an exception from a requirement
15 that the installation of an ignition interlock device
16 occur concurrently with the driver license revocation;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (6) of section 316.193, Florida
22 Statutes, is amended to read:

23 316.193 Driving under the influence; penalties.—

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

27 (a) For the first conviction, the court shall place the
28 defendant on probation for a period not to exceed 1 year and, as

29 a condition of the ~~such~~ probation, shall order the defendant to
 30 participate in public service or a community work project for a
 31 minimum of 50 hours. The court may order a defendant to pay a
 32 fine of \$10 for each hour of public service or community work
 33 otherwise required only if the court finds that the residence or
 34 location of the defendant at the time public service or
 35 community work is required or the defendant's employment
 36 obligations would create an undue hardship for the defendant.
 37 ~~However,~~ The total period of probation and incarceration may not
 38 exceed 1 year. The court must also, as a condition of probation,
 39 order:

40 1. The impoundment or immobilization of the vehicle that
 41 was operated by or was in the actual control of the defendant or
 42 any ~~one~~ vehicle registered in the defendant's name at the time
 43 of impoundment or immobilization, for a period of 10 days or for
 44 the unexpired term of any lease or rental agreement that expires
 45 within 10 days. The impoundment or immobilization must not occur
 46 concurrently with the incarceration of the defendant. The
 47 impoundment or immobilization order may be dismissed in
 48 accordance with paragraph (e), paragraph (f), paragraph (g), or
 49 paragraph (h); or

50 2. The installation of an interlock ignition device in
 51 accordance with s. 316.1938 on all vehicles that are
 52 individually or jointly leased or owned and routinely operated
 53 by the defendant for at least 3 continuous months.

54 (b) For the second conviction for an offense that occurs
 55 within ~~a period of~~ 5 years after the date of a prior conviction
 56 for violation of this section, the court shall order

57 | imprisonment for at least ~~not less than~~ 10 days. The court must
 58 | also, as a condition of probation, order:

59 | 1. The impoundment or immobilization of all vehicles owned
 60 | by the defendant at the time of impoundment or immobilization,
 61 | for a period of 30 days or for the unexpired term of any lease
 62 | or rental agreement that expires within 30 days; or

63 | 2. The installation of an interlock ignition device in
 64 | accordance with s. 316.1938 on all vehicles that are
 65 | individually or jointly leased or owned and routinely operated
 66 | by the defendant for at least 6 continuous months.

67 |
 68 | The impoundment, immobilization, or the installation of an
 69 | ignition interlock device under this paragraph must not occur
 70 | concurrently with the incarceration of the defendant, but, not
 71 | including the installation of an ignition interlock device under
 72 | this paragraph, must occur concurrently with the driver ~~driver's~~
 73 | license revocation imposed under s. 322.28(2)(a)2. The
 74 | impoundment or immobilization order may be dismissed in
 75 | accordance with paragraph (e), paragraph (f), paragraph (g), or
 76 | paragraph (h). At least 48 hours of confinement must be
 77 | consecutive.

78 | (c) For the third or subsequent conviction for an offense
 79 | that occurs within ~~a period of~~ 10 years after the date of a
 80 | prior conviction for violation of this section, the court shall
 81 | order imprisonment for at least ~~not less than~~ 30 days. The court
 82 | must also, as a condition of probation, order:

83 | 1. The impoundment or immobilization of all vehicles owned
 84 | by the defendant at the time of impoundment or immobilization,

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85 for a period of 90 days or for the unexpired term of any lease
 86 or rental agreement that expires within 90 days; or

87 2. The installation of an interlock ignition device in
 88 accordance with s. 316.1938 upon all vehicles that are
 89 individually or jointly leased or owned and routinely operated
 90 by the defendant for at least 12 continuous months.

91
 92 The impoundment, immobilization, or the installation of an
 93 ignition interlock device under this paragraph must not occur
 94 concurrently with the incarceration of the defendant, but, not
 95 including the installation of an ignition interlock device under
 96 this paragraph, must occur concurrently with the driver ~~driver's~~
 97 license revocation imposed under s. 322.28(2)(a)3. The
 98 impoundment or immobilization order may be dismissed in
 99 accordance with paragraph (e), paragraph (f), paragraph (g), or
 100 paragraph (h). At least 48 hours of confinement must be
 101 consecutive.

102 (d) The court must, at the time of sentencing the
 103 defendant, issue an order for:

- 104 1. The impoundment or immobilization of a vehicle; or
- 105 2. The installation of an ignition interlock device.

106
 107 The order of impoundment or immobilization must include the name
 108 and telephone numbers of all immobilization agencies meeting all
 109 ~~of~~ the conditions of subsection (13). Within 7 business days
 110 after the date that the court issues the order of impoundment or
 111 immobilization, the clerk of the court must send notice by
 112 certified mail, return receipt requested, to the registered

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113 owner of each vehicle, if the registered owner is a person other
114 than the defendant, and to each person of record claiming a lien
115 against the vehicle.

116 (e) A person who owns but was not operating the vehicle
117 when the offense occurred may submit to the court a police
118 report indicating that the vehicle was stolen at the time of the
119 offense or documentation of having purchased the vehicle after
120 the offense was committed from an entity other than the
121 defendant or the defendant's agent. If the court finds that the
122 vehicle was stolen or that the sale was not made to circumvent
123 the order and to allow the defendant continued access to the
124 vehicle, the order must be dismissed, and the owner of the
125 vehicle will incur no costs. If the court denies the request to
126 dismiss the order of impoundment or immobilization, the
127 petitioner may request an evidentiary hearing.

128 (f) A person who owns but was not operating the vehicle
129 when the offense occurred, and whose vehicle was stolen or who
130 purchased the vehicle after the offense was committed directly
131 from the defendant or the defendant's agent, may request an
132 evidentiary hearing to determine whether the impoundment or
133 immobilization should occur. If the court finds that ~~either~~ the
134 vehicle was stolen or the purchase was made without knowledge of
135 the offense, that the purchaser had no relationship to the
136 defendant other than through the transaction, and that the ~~such~~
137 purchase would not circumvent the order and allow the defendant
138 continued access to the vehicle, the order must be dismissed,
139 and the owner of the vehicle will incur no costs.

140 (g) The court shall also dismiss the order of impoundment

141 or immobilization of the vehicle if the court finds that the
 142 family of the owner of the vehicle has no other private or
 143 public means of transportation.

144 (h) The court may ~~also~~ dismiss the order of impoundment or
 145 immobilization of any vehicle ~~vehicles~~ that is ~~are~~ owned by the
 146 defendant but that is ~~are~~ operated solely by the employees of
 147 the defendant or any business owned by the defendant.

148 (i) All costs and fees for the impoundment or
 149 immobilization, including the cost of notification, must be paid
 150 by the owner of the vehicle or, if the vehicle is leased or
 151 rented, by the person leasing or renting the vehicle, unless the
 152 impoundment or immobilization order is dismissed. All provisions
 153 of s. 713.78 ~~shall~~ apply. The costs and fees for the impoundment
 154 or immobilization must be paid directly to the person impounding
 155 or immobilizing the vehicle.

156 (j) The person who owns a vehicle that is impounded or
 157 immobilized under this subsection ~~paragraph~~, or a person who has
 158 a lien of record against such a vehicle and who has not
 159 requested a review of the impoundment pursuant to paragraph (e),
 160 paragraph (f), or paragraph (g), may, within 10 days after the
 161 date that person has knowledge of the location of the vehicle,
 162 file a complaint in the county in which the owner resides to
 163 determine whether the vehicle was wrongfully taken or withheld
 164 from the owner or lienholder. Upon the filing of a complaint,
 165 the owner or lienholder may have the vehicle released by posting
 166 with the court a bond or other adequate security equal to the
 167 amount of the costs and fees for impoundment or immobilization,
 168 including towing or storage, to ensure the payment of such costs

169 and fees if the owner or lienholder does not prevail. When the
 170 bond is posted and the fee is paid as set forth in s. 28.24, the
 171 clerk of the court shall issue a certificate releasing the
 172 vehicle. At the time of release, after reasonable inspection,
 173 the owner or lienholder must give a receipt to the towing or
 174 storage company indicating any loss or damage to the vehicle or
 175 to the contents of the vehicle.

176 (k) A defendant, ~~in the court's discretion,~~ may be
 177 required to serve all or any portion of a term of imprisonment
 178 to which the defendant has been sentenced pursuant to this
 179 section in a residential alcoholism treatment program or a
 180 residential drug abuse treatment program. Any time spent in such
 181 a program must be credited by the court toward the term of
 182 imprisonment.

183
 184 For the purposes of this section, a any conviction for a
 185 violation of s. 327.35; a previous conviction for the violation
 186 of former s. 316.1931, former s. 860.01, or former s. 316.028;
 187 or a previous conviction outside this state for driving under
 188 the influence, driving while intoxicated, driving with an
 189 unlawful blood-alcohol level, driving with an unlawful breath-
 190 alcohol level, or any other similar alcohol-related or drug-
 191 related traffic offense, is also considered a previous
 192 conviction for violation of this section. However, in
 193 satisfaction of the fine imposed pursuant to this section, the
 194 court may, upon a finding that the defendant is financially
 195 unable to pay ~~either~~ all or part of the fine, order that the
 196 defendant participate for a specified additional ~~period of~~ time

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197 | in public service or a community work project in lieu of payment
198 | of that portion of the fine which the court determines the
199 | defendant is unable to pay. In determining such additional
200 | sentence, the court shall consider the amount of the unpaid
201 | portion of the fine and the reasonable value of the services to
202 | be ordered; however, the court may not compute the reasonable
203 | value of services at a rate less than the federal minimum wage
204 | at the time of sentencing.

205 | Section 2. This act shall take effect July 1, 2012.