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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: FAV | . | |
| 02/09/2012 | . | |
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The Committee on Criminal Justice (Dean) recommended the following:

1 **Senate Substitute for Amendment (878914) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

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

8 316.193 Driving under the influence; penalties.-

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

12 (a) For the first conviction, the court shall place the



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13 defendant on probation for a period not to exceed 1 year and, as
14 a condition of the ~~such~~ probation, shall order the defendant to
15 participate in public service or a community work project for a
16 minimum of 50 hours. The court may order a defendant to pay a
17 fine of \$10 for each hour of public service or community work
18 otherwise required only if the court finds that the residence or
19 location of the defendant at the time public service or
20 community work is required or the defendant's employment
21 obligations would create an undue hardship for the defendant.
22 ~~However,~~ The total period of probation and incarceration may not
23 exceed 1 year. The court must also, as a condition of probation,
24 order:

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

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

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



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

44 1. The impoundment or immobilization of all vehicles owned
45 by the defendant at the time of impoundment or immobilization,
46 for a period of 30 days or for the unexpired term of any lease
47 or rental agreement that expires within 30 days; or

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

52
53 The impoundment, ~~or~~ immobilization, or the installation of an
54 ignition interlock device under this paragraph must not occur
55 concurrently with the incarceration of the defendant, but, not
56 including the installation of an ignition interlock device under
57 this paragraph, and must occur concurrently with the driver
58 ~~driver's~~ license revocation imposed under s. 322.28(2)(a)2. The
59 impoundment or immobilization order may be dismissed in
60 accordance with paragraph (e), paragraph (f), paragraph (g), or
61 paragraph (h). At least 48 hours of confinement must be
62 consecutive.

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

68 1. The impoundment or immobilization of all vehicles owned
69 by the defendant at the time of impoundment or immobilization,
70 for a period of 90 days or for the unexpired term of any lease



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71 or rental agreement that expires within 90 days; or
72 2. The installation of an interlock ignition device in
73 accordance with s. 316.1938 upon all vehicles that are
74 individually or jointly leased or owned and routinely operated
75 by the defendant for at least 12 continuous months.

76
77 The impoundment, ~~or~~ immobilization, or the installation of an
78 ignition interlock device under this paragraph must not occur
79 concurrently with the incarceration of the defendant, but, not
80 including the installation of an ignition interlock device under
81 this paragraph, and must occur concurrently with the driver
82 ~~driver's~~ license revocation imposed under s. 322.28(2)(a)3. The
83 impoundment or immobilization order may be dismissed in
84 accordance with paragraph (e), paragraph (f), paragraph (g), or
85 paragraph (h). At least 48 hours of confinement must be
86 consecutive.

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

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

91
92 The order of impoundment or immobilization must include the name
93 and telephone numbers of all immobilization agencies meeting all
94 ~~of~~ the conditions of subsection (13). Within 7 business days
95 after the date that the court issues the order of impoundment or
96 immobilization, the clerk of the court must send notice by
97 certified mail, return receipt requested, to the registered
98 owner of each vehicle, if the registered owner is a person other
99 than the defendant, and to each person of record claiming a lien



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100 against the vehicle.

101 (e) A person who owns but was not operating the vehicle
102 when the offense occurred may submit to the court a police
103 report indicating that the vehicle was stolen at the time of the
104 offense or documentation of having purchased the vehicle after
105 the offense was committed from an entity other than the
106 defendant or the defendant's agent. If the court finds that the
107 vehicle was stolen or that the sale was not made to circumvent
108 the order and to allow the defendant continued access to the
109 vehicle, the order must be dismissed, and the owner of the
110 vehicle will incur no costs. If the court denies the request to
111 dismiss the order of impoundment or immobilization, the
112 petitioner may request an evidentiary hearing.

113 (f) A person who owns but was not operating the vehicle
114 when the offense occurred, and whose vehicle was stolen or who
115 purchased the vehicle after the offense was committed directly
116 from the defendant or the defendant's agent, may request an
117 evidentiary hearing to determine whether the impoundment or
118 immobilization should occur. If the court finds that ~~either~~ the
119 vehicle was stolen or the purchase was made without knowledge of
120 the offense, that the purchaser had no relationship to the
121 defendant other than through the transaction, and that the ~~such~~
122 purchase would not circumvent the order and allow the defendant
123 continued access to the vehicle, the order must be dismissed,
124 and the owner of the vehicle will incur no costs.

125 (g) The court shall also dismiss the order of impoundment
126 or immobilization of the vehicle if the court finds that the
127 family of the owner of the vehicle has no other private or
128 public means of transportation.



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129 (h) The court may ~~also~~ dismiss the order of impoundment or
130 immobilization of any vehicle ~~vehicles~~ that is ~~are~~ owned by the
131 defendant but that is ~~are~~ operated solely by the employees of
132 the defendant or any business owned by the defendant.

133 (i) All costs and fees for the impoundment or
134 immobilization, including the cost of notification, must be paid
135 by the owner of the vehicle or, if the vehicle is leased or
136 rented, by the person leasing or renting the vehicle, unless the
137 impoundment or immobilization order is dismissed. All provisions
138 of s. 713.78 ~~shall~~ apply. The costs and fees for the impoundment
139 or immobilization must be paid directly to the person impounding
140 or immobilizing the vehicle.

141 (j) The person who owns a vehicle that is impounded or
142 immobilized under this subsection ~~paragraph~~, or a person who has
143 a lien of record against such a vehicle and who has not
144 requested a review of the impoundment pursuant to paragraph (e),
145 paragraph (f), or paragraph (g), may, within 10 days after the
146 date that person has knowledge of the location of the vehicle,
147 file a complaint in the county in which the owner resides to
148 determine whether the vehicle was wrongfully taken or withheld
149 from the owner or lienholder. Upon the filing of a complaint,
150 the owner or lienholder may have the vehicle released by posting
151 with the court a bond or other adequate security equal to the
152 amount of the costs and fees for impoundment or immobilization,
153 including towing or storage, to ensure the payment of such costs
154 and fees if the owner or lienholder does not prevail. When the
155 bond is posted and the fee is paid as set forth in s. 28.24, the
156 clerk of the court shall issue a certificate releasing the
157 vehicle. At the time of release, after reasonable inspection,



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158 the owner or lienholder must give a receipt to the towing or
159 storage company indicating any loss or damage to the vehicle or
160 to the contents of the vehicle.

161 (k) A defendant, ~~in the court's discretion,~~ may be required
162 to serve all or any portion of a term of imprisonment to which
163 the defendant has been sentenced pursuant to this section in a
164 residential alcoholism treatment program or a residential drug
165 abuse treatment program. Any time spent in such a program must
166 be credited by the court toward the term of imprisonment.

167
168 For the purposes of this section, a ~~any~~ conviction for a
169 violation of s. 327.35; a previous conviction for the violation
170 of former s. 316.1931, former s. 860.01, or former s. 316.028;
171 or a previous conviction outside this state for driving under
172 the influence, driving while intoxicated, driving with an
173 unlawful blood-alcohol level, driving with an unlawful breath-
174 alcohol level, or any other similar alcohol-related or drug-
175 related traffic offense, is also considered a previous
176 conviction for violation of this section. However, in
177 satisfaction of the fine imposed pursuant to this section, the
178 court may, upon a finding that the defendant is financially
179 unable to pay ~~either~~ all or part of the fine, order that the
180 defendant participate for a specified additional ~~period of~~ time
181 in public service or a community work project in lieu of payment
182 of that portion of the fine which the court determines the
183 defendant is unable to pay. In determining such additional
184 sentence, the court shall consider the amount of the unpaid
185 portion of the fine and the reasonable value of the services to
186 be ordered; however, the court may not compute the reasonable



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187 value of services at a rate less than the federal minimum wage
188 at the time of sentencing.

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

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192 ===== T I T L E A M E N D M E N T =====

193 And the title is amended as follows:

194 Delete everything before the enacting clause

195 and insert:

196 A bill to be entitled

197 An act relating to interlock ignition devices ordered

198 for probation for DUI; amending s. 316.193, F.S.;

199 requiring that the court, as a condition of probation

200 for a conviction of the offense of driving under the

201 influence, impound or immobilize the vehicle that was

202 operated by or was in the actual control of the

203 defendant or require the defendant to install an

204 interlock ignition device on all vehicles that are

205 individually or jointly leased or owned and routinely

206 operated by the defendant; prohibiting the

207 installation of an ignition interlock device from

208 occurring concurrently with the incarceration of the

209 defendant; providing an exception from a requirement

210 that the installation of an ignition interlock device

211 occur concurrently with the driver license revocation;

212 providing an effective date.