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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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



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

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

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

38 (b) For the second conviction for an offense that occurs
39 within ~~a period of~~ 5 years after the date of a prior conviction
40 for violation of this section, the court shall order
41 imprisonment for at least ~~not less than~~ 10 days. The court must



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42 also, as a condition of probation, order:

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

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

51
52 The impoundment, ~~or~~ immobilization, or installation of an
53 ignition interlock device under this paragraph must not occur
54 concurrently with the incarceration of the defendant, but, not
55 including the installation of an ignition interlock device under
56 this paragraph, and must occur concurrently with the driver
57 ~~driver's~~ license revocation imposed under s. 322.28(2)(a)2. The
58 impoundment or immobilization order may be dismissed in
59 accordance with paragraph (e), paragraph (f), paragraph (g), or
60 paragraph (h). At least 48 hours of confinement must be
61 consecutive.

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

67 1. The impoundment or immobilization of all vehicles owned
68 by the defendant at the time of impoundment or immobilization,
69 for a period of 90 days or for the unexpired term of any lease
70 or rental agreement that expires within 90 days; and



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

75
76 The impoundment, ~~or~~ immobilization, or installation of an
77 ignition interlock device under this paragraph must not occur
78 concurrently with the incarceration of the defendant, but, not
79 including the installation of an ignition interlock device under
80 this paragraph, and must occur concurrently with the driver
81 ~~driver's~~ license revocation imposed under s. 322.28(2)(a)3. The
82 impoundment or immobilization order may be dismissed in
83 accordance with paragraph (e), paragraph (f), paragraph (g), or
84 paragraph (h). At least 48 hours of confinement must be
85 consecutive.

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

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

90
91 The order of impoundment or immobilization must include the name
92 and telephone numbers of all immobilization agencies meeting all
93 ~~of~~ the conditions of subsection (13). Within 7 business days
94 after the date that the court issues the order of impoundment or
95 immobilization, the clerk of the court must send notice by
96 certified mail, return receipt requested, to the registered
97 owner of each vehicle, if the registered owner is a person other
98 than the defendant, and to each person of record claiming a lien
99 against the vehicle.



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

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

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

128 (h) The court may ~~also~~ dismiss the order of impoundment or



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129 immobilization of any vehicle ~~vehicles~~ that is ~~are~~ owned by the
130 defendant but that is ~~are~~ operated solely by the employees of
131 the defendant or any business owned by the defendant.

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

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



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158 storage company indicating any loss or damage to the vehicle or
159 to the contents of the vehicle.

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

166
167 For the purposes of this section, a ~~any~~ conviction for a
168 violation of s. 327.35; a previous conviction for the violation
169 of former s. 316.1931, former s. 860.01, or former s. 316.028;
170 or a previous conviction outside this state for driving under
171 the influence, driving while intoxicated, driving with an
172 unlawful blood-alcohol level, driving with an unlawful breath-
173 alcohol level, or any other similar alcohol-related or drug-
174 related traffic offense, is also considered a previous
175 conviction for violation of this section. However, in
176 satisfaction of the fine imposed pursuant to this section, the
177 court may, upon a finding that the defendant is financially
178 unable to pay ~~either~~ all or part of the fine, order that the
179 defendant participate for ~~a~~ specified additional ~~period of~~ time
180 in public service or a community work project in lieu of payment
181 of that portion of the fine which the court determines the
182 defendant is unable to pay. In determining such additional
183 sentence, the court shall consider the amount of the unpaid
184 portion of the fine and the reasonable value of the services to
185 be ordered; however, the court may not compute the reasonable
186 value of services at a rate less than the federal minimum wage



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187 at the time of sentencing.

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

189

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

191 And the title is amended as follows:

192 Delete everything before the enacting clause
193 and insert:

194 A bill to be entitled
195 An act relating to interlock ignition devices ordered
196 for probation for DUI; amending s. 316.193, F.S.;
197 requiring that the court, as a condition of probation
198 for a conviction of the offense of driving under the
199 influence, impound or immobilize the vehicle that was
200 operated by or was in the actual control of the
201 defendant or require the defendant to install an
202 interlock ignition device on all vehicles that are
203 individually or jointly leased or owned and routinely
204 operated by the defendant; prohibiting the
205 installation of an ignition interlock device from
206 occurring concurrently with the incarceration of the
207 defendant; providing an exception from a requirement
208 that the installation of an ignition interlock device
209 occur concurrently with the driver license revocation;
210 providing an effective date.