

By Senator Simpson

18-01292-15

20151192__

1 A bill to be entitled
2 An act relating to penalties for driving under the
3 influence; amending s. 316.193, F.S.; providing that a
4 court may order a transdermal monitor device or
5 treatment program, or both, in lieu of an ignition
6 interlock device for violations of driving under the
7 influence under certain circumstances; requiring the
8 offender to assume reasonable costs for such
9 transdermal monitoring under certain circumstances;
10 deleting obsolete provisions; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsections (2), (4), and (5) and paragraphs (i)
16 and (j) of subsection (6) of section 316.193, Florida Statutes,
17 are amended to read:

18 316.193 Driving under the influence; penalties.—

19 (2)(a) Except as provided in paragraph (b), subsection (3),
20 or subsection (4), any person who is convicted of a violation of
21 subsection (1) shall be punished:

22 1. By a fine of:

23 a. Not less than \$500 or more than \$1,000 for a first
24 conviction.

25 b. Not less than \$1,000 or more than \$2,000 for a second
26 conviction; and

27 2. By imprisonment for:

28 a. Not more than 6 months for a first conviction.

29 b. Not more than 9 months for a second conviction.

18-01292-15

20151192__

30 3. For a second conviction, by mandatory placement for a
31 period of at least 1 year, at the convicted person's sole
32 expense, of an ignition interlock device approved by the
33 department in accordance with s. 316.1938 upon all vehicles that
34 are individually or jointly leased or owned and routinely
35 operated by the convicted person, when the convicted person
36 qualifies for a permanent or restricted license. The court may,
37 in lieu of an ignition interlock device, order a transdermal
38 monitor device or treatment program, or both. ~~The installation~~
39 ~~of such device may not occur before July 1, 2003.~~

40 (b)1. Any person who is convicted of a third violation of
41 this section for an offense that occurs within 10 years after a
42 prior conviction for a violation of this section commits a
43 felony of the third degree, punishable as provided in s.
44 775.082, s. 775.083, or s. 775.084. In addition, the court shall
45 order the mandatory placement for a period of not less than 2
46 years, at the convicted person's sole expense, of an ignition
47 interlock device approved by the department in accordance with
48 s. 316.1938 upon all vehicles that are individually or jointly
49 leased or owned and routinely operated by the convicted person,
50 when the convicted person qualifies for a permanent or
51 restricted license. The court may, in lieu of an ignition
52 interlock device, order a transdermal monitor device or
53 treatment program, or both. ~~The installation of such device may~~
54 ~~not occur before July 1, 2003.~~

55 2. Any person who is convicted of a third violation of this
56 section for an offense that occurs more than 10 years after the
57 date of a prior conviction for a violation of this section shall
58 be punished by a fine of not less than \$2,000 or more than

18-01292-15

20151192__

59 \$5,000 and by imprisonment for not more than 12 months. In
60 addition, the court shall order the mandatory placement for a
61 period of at least 2 years, at the convicted person's sole
62 expense, of an ignition interlock device approved by the
63 department in accordance with s. 316.1938 upon all vehicles that
64 are individually or jointly leased or owned and routinely
65 operated by the convicted person, when the convicted person
66 qualifies for a permanent or restricted license. The court may,
67 in lieu of an ignition interlock device, order a transdermal
68 monitor device or treatment program, or both. ~~The installation~~
69 ~~of such device may not occur before July 1, 2003.~~

70 3. Any person who is convicted of a fourth or subsequent
71 violation of this section, regardless of when any prior
72 conviction for a violation of this section occurred, commits a
73 felony of the third degree, punishable as provided in s.
74 775.082, s. 775.083, or s. 775.084. However, the fine imposed
75 for such fourth or subsequent violation may be not less than
76 \$2,000.

77 (c) In addition to the penalties in paragraph (a), the
78 court may order placement, at the convicted person's sole
79 expense, of an ignition interlock device approved by the
80 department in accordance with s. 316.1938 for at least 6
81 continuous months upon all vehicles that are individually or
82 jointly leased or owned and routinely operated by the convicted
83 person if, at the time of the offense, the person had a blood-
84 alcohol level or breath-alcohol level of .08 or higher. The
85 court may, in lieu of an ignition interlock device, order a
86 transdermal monitor device or treatment program, or both.

87 (4) Any person who is convicted of a violation of

18-01292-15

20151192__

88 subsection (1) and who has a blood-alcohol level or breath-
89 alcohol level of 0.15 or higher, or any person who is convicted
90 of a violation of subsection (1) and who at the time of the
91 offense was accompanied in the vehicle by a person under the age
92 of 18 years, shall be punished:

93 (a) By a fine of:

94 1. Not less than \$1,000 or more than \$2,000 for a first
95 conviction.

96 2. Not less than \$2,000 or more than \$4,000 for a second
97 conviction.

98 3. Not less than \$4,000 for a third or subsequent
99 conviction.

100 (b) By imprisonment for:

101 1. Not more than 9 months for a first conviction.

102 2. Not more than 12 months for a second conviction.

103

104 For the purposes of this subsection, only the instant offense is
105 required to be a violation of subsection (1) by a person who has
106 a blood-alcohol level or breath-alcohol level of 0.15 or higher.

107 (c) In addition to the penalties in paragraphs (a) and (b),
108 the court shall order the mandatory placement, at the convicted
109 person's sole expense, of an ignition interlock device approved
110 by the department in accordance with s. 316.1938 upon all
111 vehicles that are individually or jointly leased or owned and
112 routinely operated by the convicted person for not less than 6
113 continuous months for the first offense and for not less than 2
114 continuous years for a second offense, when the convicted person
115 qualifies for a permanent or restricted license. The court may,
116 in lieu of an ignition interlock device, order a transdermal

18-01292-15

20151192__

117 monitor device or treatment program, or both.

118 (5) The court shall place all offenders convicted of
119 violating this section on monthly reporting probation and shall
120 require completion of a substance abuse course conducted by a
121 DUI program licensed by the department under s. 322.292, which
122 must include a psychosocial evaluation of the offender. The
123 court may also order a transdermal monitor device in addition to
124 a treatment program. If the DUI program refers the offender to
125 an authorized substance abuse treatment provider for substance
126 abuse treatment, in addition to any sentence or fine imposed
127 under this section, completion of all such education,
128 evaluation, and treatment is a condition of reporting probation.
129 The offender shall assume reasonable costs for such education,
130 evaluation, transdermal monitoring, and treatment. The referral
131 to treatment resulting from a psychosocial evaluation shall not
132 be waived without a supporting independent psychosocial
133 evaluation conducted by an authorized substance abuse treatment
134 provider appointed by the court, which shall have access to the
135 DUI program's psychosocial evaluation before the independent
136 psychosocial evaluation is conducted. The court shall review the
137 results and recommendations of both evaluations before
138 determining the request for waiver. The offender shall bear the
139 full cost of this procedure. The term "substance abuse" means
140 the abuse of alcohol or any substance named or described in
141 Schedules I through V of s. 893.03. If an offender referred to
142 treatment under this subsection fails to report for or complete
143 such treatment or fails to complete the DUI program substance
144 abuse education course and evaluation, the DUI program shall
145 notify the court and the department of the failure. Upon receipt

18-01292-15

20151192__

146 of the notice, the department shall cancel the offender's
147 driving privilege, notwithstanding the terms of the court order
148 or any suspension or revocation of the driving privilege. The
149 department may temporarily reinstate the driving privilege on a
150 restricted basis upon verification from the DUI program that the
151 offender is currently participating in treatment and the DUI
152 education course and evaluation requirement has been completed.
153 If the DUI program notifies the department of the second failure
154 to complete treatment, the department shall reinstate the
155 driving privilege only after notice of completion of treatment
156 from the DUI program. The organization that conducts the
157 substance abuse education and evaluation may not provide
158 required substance abuse treatment unless a waiver has been
159 granted to that organization by the department. A waiver may be
160 granted only if the department determines, in accordance with
161 its rules, that the service provider that conducts the substance
162 abuse education and evaluation is the most appropriate service
163 provider and is licensed under chapter 397 or is exempt from
164 such licensure. A statistical referral report shall be submitted
165 quarterly to the department by each organization authorized to
166 provide services under this section.

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

170 (i) The court may also dismiss the order of impoundment or
171 immobilization if the defendant provides proof to the
172 satisfaction of the court that a functioning, certified ignition
173 interlock device has been installed upon all vehicles that are
174 individually or jointly leased or owned and routinely operated

18-01292-15

20151192__

175 by the convicted person. The court may, in lieu of an ignition
176 interlock device, order a transdermal monitor device or
177 treatment program, or both.

178 (j)1. Notwithstanding the provisions of this section, s.
179 316.1937, and s. 322.2715 relating to ignition interlock devices
180 required for second or subsequent offenders, in order to
181 strengthen the pretrial and posttrial options available to
182 prosecutors and judges, the court may order, if deemed
183 appropriate, that a person participate in a qualified sobriety
184 and drug monitoring program, as defined in subparagraph 2., in
185 addition to the ignition interlock device requirement.
186 Participation shall be at the person's sole expense.

187 2. As used in this paragraph, the term "qualified sobriety
188 and drug monitoring program" means an evidence-based program,
189 approved by the department, in which participants are regularly
190 tested for alcohol and drug use. As the court deems appropriate,
191 the program may monitor alcohol or drugs through one or more of
192 the following modalities: breath testing twice a day; continuous
193 transdermal alcohol monitoring in cases of hardship; or random
194 blood, breath, urine, or oral fluid testing. Testing modalities
195 that provide the best ability to sanction a violation as close
196 in time as reasonably feasible to the occurrence of the
197 violation should be given preference. This paragraph does not
198 preclude a court from ordering an ignition interlock device as a
199 testing modality.

200 3. For purposes of this paragraph, the term "evidence-based
201 program" means a program that satisfies the requirements of at
202 least two of the following:

203 a. The program is included in the federal registry of

18-01292-15

20151192__

204 evidence-based programs and practices.

205 b. The program has been reported in a peer-reviewed journal
206 as having positive effects on the primary targeted outcome.

207 c. The program has been documented as effective by informed
208 experts and other sources.

209
210 ~~For the purposes of this section, any conviction for a violation~~
211 ~~of s. 327.35; a previous conviction for the violation of former~~
212 ~~s. 316.1931, former s. 860.01, or former s. 316.028; or a~~
213 ~~previous conviction outside this state for driving under the~~
214 ~~influence, driving while intoxicated, driving with an unlawful~~
215 ~~blood alcohol level, driving with an unlawful breath alcohol~~
216 ~~level, or any other similar alcohol-related or drug-related~~
217 ~~traffic offense, is also considered a previous conviction for~~
218 ~~violation of this section. However, in satisfaction of the fine~~
219 ~~imposed pursuant to this section, the court may, upon a finding~~
220 ~~that the defendant is financially unable to pay either all or~~
221 ~~part of the fine, order that the defendant participate for a~~
222 ~~specified additional period of time in public service or a~~
223 ~~community work project in lieu of payment of that portion of the~~
224 ~~fine which the court determines the defendant is unable to pay.~~
225 ~~In determining such additional sentence, the court shall~~
226 ~~consider the amount of the unpaid portion of the fine and the~~
227 ~~reasonable value of the services to be ordered; however, the~~
228 ~~court may not compute the reasonable value of services at a rate~~
229 ~~less than the federal minimum wage at the time of sentencing.~~

230
231 For the purposes of this section, any conviction for a violation
232 of s. 327.35; a previous conviction for the violation of former

18-01292-15

20151192__

233 s. 316.1931, former s. 860.01, or former s. 316.028; or a
234 previous conviction outside this state for driving under the
235 influence, driving while intoxicated, driving with an unlawful
236 blood-alcohol level, driving with an unlawful breath-alcohol
237 level, or any other similar alcohol-related or drug-related
238 traffic offense, is also considered a previous conviction for
239 violation of this section. However, in satisfaction of the fine
240 imposed pursuant to this section, the court may, upon a finding
241 that the defendant is financially unable to pay either all or
242 part of the fine, order that the defendant participate for a
243 specified additional period of time in public service or a
244 community work project in lieu of payment of that portion of the
245 fine which the court determines the defendant is unable to pay.
246 In determining such additional sentence, the court shall
247 consider the amount of the unpaid portion of the fine and the
248 reasonable value of the services to be ordered; however, the
249 court may not compute the reasonable value of services at a rate
250 less than the federal minimum wage at the time of sentencing.

251 Section 2. This act shall take effect July 1, 2015.