

By the Committee on Criminal Justice; and Senator Simmons

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1 A bill to be entitled
2 An act relating to driving under the influence;
3 creating s. 316.19395, F.S.; requiring each judicial
4 circuit to establish a Driving Under the Influence
5 Diversion Pilot Program; providing the purpose of the
6 pilot program; requiring the state attorney of each
7 judicial circuit to develop and operate the pilot
8 program; requiring the policies and procedures of the
9 pilot program to be published on the website of the
10 office of the state attorney; providing eligibility
11 requirements; defining the term "conviction";
12 providing pilot program requirements; requiring that a
13 person who completes the pilot program be offered a
14 certain plea agreement; providing for withholding of
15 adjudication; authorizing the state attorney to
16 discharge a person who fails to complete the pilot
17 program and pursue prosecution of driving under the
18 influence; requiring state attorneys to annually
19 report certain information to the Governor and the
20 Legislature, by a specified date; requiring the
21 Department of Highway Safety and Motor Vehicles to
22 establish a certain statewide database, by a certain
23 date; requiring judicial circuits to provide a certain
24 monthly report to the department; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Section 316.19395, Florida Statutes, is created

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30 to read:

31 316.19395 Driving Under the Influence Diversion Pilot
32 Program.—

33 (1) DEVELOPMENT; IMPLEMENTATION; OPERATION.—A Driving Under
34 the Influence Diversion Pilot Program shall be established in
35 each judicial circuit for the purpose of offering a person
36 charged with a first offense of driving under the influence as
37 provided in s. 316.193 the opportunity to avoid a conviction for
38 the offense while ensuring the person receives substance abuse
39 treatment if necessary. The state attorney of the judicial
40 circuit shall develop policies and procedures of the pilot
41 program, including program implementation and operation and the
42 selection of approved program providers. In developing such
43 policies and procedures, the state attorney shall consult local
44 law enforcement agency representatives, county probation
45 officers, the public defender, and local program providers. The
46 state attorney of each judicial circuit shall operate that
47 circuit's pilot program. Each judicial circuit shall publish the
48 terms and conditions of the pilot program on the website of the
49 office of the state attorney.

50 (2) ELIGIBILITY REQUIREMENTS.—

51 (a) A person charged with driving under the influence, in
52 violation of s. 316.193, is eligible for participation in the
53 pilot program if he or she:

54 1. Has not been charged with a prior alcohol-related or
55 drug-related criminal traffic offense, regardless of
56 disposition.

57 2. Does not have a pending felony or prior felony
58 conviction.

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59 3. Has no more than two prior misdemeanor convictions.

60 4. Was not involved in a motor vehicle crash or accident
61 relating to the charge of driving under the influence.

62 5. Was not, at the time of the offense, accompanied in the
63 vehicle by a person under 18 years of age.

64 6. Did not, at the time of the offense, have a blood-
65 alcohol level of 0.20 or more grams of alcohol per 100
66 milliliters of blood; or a breath-alcohol level of 0.20 or more
67 grams of alcohol per 210 liters of breath.

68 7. Has not previously participated in the pilot program.

69 8. Waives the speedy trial period. The speedy trial period
70 is tolled immediately upon entry into the pilot program until
71 the participant completes all terms and enters a plea pursuant
72 to subsection (4) or the participant is discharged from the
73 pilot program pursuant to subsection (5).

74 (b) For purposes of this subsection, the term "conviction"
75 means a determination of guilt which is the result of a plea or
76 trial, regardless of whether adjudication is withheld or a plea
77 of nolo contendere is entered.

78 (3) PILOT PROGRAM REQUIREMENTS.—

79 (a) A person must participate in the pilot program for 12
80 months, during which period he or she may not possess or consume
81 alcohol, or any controlled substance as set forth in chapter
82 893, unless the controlled substance was lawfully obtained from
83 a practitioner or pursuant to a valid prescription, and must
84 complete the following as administered by an approved program
85 provider:

86 1. Fifty hours of community service if, at the time of the
87 offense, the person had a blood-alcohol level of 0.15 or less

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88 grams of alcohol per 100 milliliters of blood; or a breath-
89 alcohol level of 0.15 or less grams of alcohol per 210 liters of
90 breath.

91 2. Seventy-five hours of community service if, at the time
92 of the offense, the person had a blood-alcohol level of more
93 than 0.15, but less than 0.20 grams of alcohol per 100
94 milliliters of blood; or a breath-alcohol level of more than
95 0.15, but less than 0.20 grams of alcohol per 210 liters of
96 breath; or did not provide a blood or breath sample.

97 3. A substance abuse course conducted by a DUI program
98 licensed by the department under s. 322.292, which shall include
99 a psychosocial evaluation of the person, and any substance abuse
100 treatment recommendations by such program.

101 4. A victim's impact panel session, if such a panel exists
102 within the judicial circuit, or a victim's impact class.

103 (b) A person who participates in the pilot program must pay
104 all fines and standard costs imposed by the judicial circuit.

105 (c) Upon commencement of the person's participation in the
106 pilot program, all motor vehicles that are individually or
107 jointly leased or owned and routinely operated by the person
108 shall be impounded or immobilized for a period of 10 days.

109 (d)1. After the impoundment or immobilization period
110 required by paragraph (c), the person shall have installed on
111 all such vehicles, and must successfully use, an ignition
112 interlock device approved by the department in accordance with
113 s. 316.1938 for a period of:

114 a. Ninety days if, at the time of the offense, the person
115 had a blood-alcohol level of 0.15 or less grams of alcohol per
116 100 milliliters of blood; or a breath-alcohol level of 0.15 or

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117 less grams of alcohol per 210 liters of breath.

118 b. One hundred eighty days if, at the time of the offense,
119 the person had a blood-alcohol level of more than 0.15, but less
120 than 0.20 grams of alcohol per 100 milliliters of blood; or a
121 breath-alcohol level more than 0.15, but less than 0.20 grams of
122 alcohol per 210 liters of breath; or did not provide a blood or
123 breath sample.

124 2. If the person claims inability to pay for an ignition
125 interlock device and:

126 a. The person's family income is at or below 100 percent of
127 the federal poverty level as documented by written order of the
128 court, the regular monthly leasing fee charged to all customers
129 by the ignition interlock device provider shall be discounted
130 for that person by 50 percent.

131 b. The person's family income is greater than 100 percent
132 but at or below 149 percent of the federal poverty level as
133 documented by written order of the court, the regular monthly
134 leasing fee charged to all customers by the ignition interlock
135 device provider shall be discounted for that person by 25
136 percent.

137 3. A person who qualifies for a discounted monthly leasing
138 fee pursuant to subparagraph 2. is not required to pay the cost
139 of installation or deinstallation of the ignition interlock
140 device.

141 (4) COMPLETION OF PILOT PROGRAM.—If a person complies with
142 this section and successfully completes the pilot program, he or
143 she shall be offered an agreement providing for a plea of guilty
144 or nolo contendere to the offense of reckless driving as
145 provided in s. 316.192. A person who accepts such plea agreement

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146 is not subject to the provisions of this chapter relating to the
147 offense of driving under the influence, and the trial judge
148 shall withhold adjudication for reckless driving notwithstanding
149 s. 316.656.

150 (5) FAILURE TO COMPLETE PILOT PROGRAM.—If a person does not
151 comply with this section and fails to successfully complete the
152 pilot program, the state attorney operating the pilot program
153 may discharge the person from the program and pursue prosecution
154 of the offense of driving under the influence.

155 (6) ANNUAL REPORT.—By October 1 of each year, beginning in
156 2021, the state attorney of each judicial circuit shall report
157 the results of the pilot program to the Governor, the President
158 of the Senate, and the Speaker of the House of Representatives.
159 The report shall include:

160 (a) The number of cases diverted from prosecution of
161 driving under the influence.

162 (b) The number of persons who successfully completed the
163 pilot program.

164 (c) The number of persons who failed to successfully
165 complete the pilot program and were discharged from the program.

166 (d) The number of persons who successfully completed the
167 pilot program who were later charged with another alcohol-
168 related or drug-related criminal traffic offense.

169 (e) The number of persons who failed to successfully
170 complete the pilot program who were later charged with another
171 alcohol-related or drug-related criminal traffic offense.

172 (7) STATEWIDE DATABASE.—By July 1, 2023, the department
173 shall establish a statewide database of persons who participate
174 in the pilot program. Each judicial circuit must provide monthly

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175 reports to the department of the number of persons who have
176 elected to participate in the pilot program.

177 Section 2. This act shall take effect July 1, 2020.