

By the Committee on Criminal Justice; and Senator Wright

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1                                   A bill to be entitled  
2       An act relating to driving under the influence;  
3       amending s. 316.193, F.S.; prohibiting a trial court  
4       from accepting specified pleas when a person is  
5       charged with the offense of driving under the  
6       influence unless specified conditions are met;  
7       amending s. 316.1932, F.S.; requiring a person to be  
8       told that his or her first failure to submit to a  
9       lawful test of breath or urine is a second degree  
10      misdemeanor and his or her second or subsequent  
11      refusal is a first degree misdemeanor; making  
12      technical changes; amending s. 316.1939, F.S.;  
13      reclassifying a person's first failure to submit to a  
14      lawful test of breath or urine as a second degree  
15      misdemeanor; clarifying provisions related to a  
16      person's second or subsequent failure to submit to a  
17      lawful test of breath, urine, or blood; making  
18      technical changes; creating s. 316.19395, F.S.;  
19      authorizing judicial circuits to create a Driving  
20      Under the Influence Diversion Program; requiring the  
21      policies and procedures of the program to be published  
22      on the website of a participating state attorney's  
23      office; requiring each judicial circuit operating such  
24      a program to submit participant information for  
25      persons who successfully complete the program to the  
26      Department of Highway Safety and Motor Vehicles;  
27      requiring the department to notate the driver record  
28      of such participants indicating successful completion;  
29      prohibiting a person from completing a subsequent

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30 Driving Under the Influence Diversion Program;  
31 amending s. 316.656, F.S.; prohibiting a court from  
32 suspending, deferring, or withholding adjudication of  
33 guilt or imposition of sentence for a specified  
34 violation; providing an effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Subsection (15) is added to section 316.193,  
39 Florida Statutes, to read:

40 316.193 Driving under the influence; penalties.—

41 (15) A trial court judge may not accept a plea of guilty or  
42 no contest to a reduced charge, including reckless driving under  
43 s. 316.192, from a person charged with a violation of subsection  
44 (1) unless:

45 (a) The trial court determines there is a good faith basis  
46 to believe a reduction in such charge is warranted; or

47 (b) The defendant successfully completes a Driving Under  
48 the Influence Diversion Program in accordance with s. 316.19395.

49 Section 2. Paragraph (a) of subsection (1) of section  
50 316.1932, Florida Statutes, is amended to read:

51 316.1932 Tests for alcohol, chemical substances, or  
52 controlled substances; implied consent; refusal.—

53 (1) (a) 1.a. A person who accepts the privilege extended by  
54 the laws of this state of operating a motor vehicle within this  
55 state is, by operating such vehicle, deemed to have given his or  
56 her consent to submit to an approved chemical test or physical  
57 test including, but not limited to, an infrared light test of  
58 his or her breath for the purpose of determining the alcoholic

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59 content of his or her blood or breath if the person is lawfully  
60 arrested for any offense allegedly committed while the person  
61 was driving or was in actual physical control of a motor vehicle  
62 while under the influence of alcoholic beverages. The chemical  
63 or physical breath test must be incidental to a lawful arrest  
64 and administered at the request of a law enforcement officer who  
65 has reasonable cause to believe such person was driving or was  
66 in actual physical control of the motor vehicle within this  
67 state while under the influence of alcoholic beverages. The  
68 administration of a breath test does not preclude the  
69 administration of another type of test. The person must ~~shall~~ be  
70 told that his or her failure to submit to any lawful test of his  
71 or her breath will result in the suspension of his or her  
72 license ~~the person's privilege~~ to operate a motor vehicle as  
73 provided in s. 322.2615(1)(a) for a period of 1 year for a first  
74 refusal, or for a period of 18 months if the driver license  
75 ~~driving privilege~~ of such person has been previously suspended  
76 or if he or she has previously been fined under s. 327.35215 as  
77 a result of a refusal to submit to a test or tests required  
78 under this chapter or chapter 327, and must ~~shall~~ also be told  
79 that if he or she refuses to submit to a lawful test of his or  
80 her breath ~~and his or her driving privilege has been previously~~  
81 ~~suspended or if he or she has previously been fined under s.~~  
82 ~~327.35215 for a prior refusal to submit to a lawful test of his~~  
83 ~~or her breath, urine, or blood as required under this chapter or~~  
84 ~~chapter 327,~~ he or she commits a misdemeanor of the second ~~first~~  
85 degree, punishable as provided in s. 775.082 or s. 775.083, for  
86 a first refusal and a misdemeanor of the first degree,  
87 punishable as provided in s. 775.082 or s. 775.083, for a second

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88 or subsequent refusal, in addition to any other penalties  
89 provided by law. The refusal to submit to a chemical or physical  
90 breath test upon the request of a law enforcement officer as  
91 provided in this section is admissible into evidence in any  
92 criminal proceeding.

93 b. A person who accepts the privilege extended by the laws  
94 of this state of operating a motor vehicle within this state is,  
95 by operating such vehicle, deemed to have given his or her  
96 consent to submit to a urine test for the purpose of detecting  
97 the presence of chemical substances as set forth in s. 877.111  
98 or controlled substances if the person is lawfully arrested for  
99 any offense allegedly committed while the person was driving or  
100 was in actual physical control of a motor vehicle while under  
101 the influence of chemical substances or controlled substances.  
102 The urine test must be incidental to a lawful arrest and  
103 administered at a detention facility or any other facility,  
104 mobile or otherwise, which is equipped to administer such tests  
105 at the request of a law enforcement officer who has reasonable  
106 cause to believe such person was driving or was in actual  
107 physical control of a motor vehicle within this state while  
108 under the influence of chemical substances or controlled  
109 substances. The urine test must ~~shall~~ be administered at a  
110 detention facility or any other facility, mobile or otherwise,  
111 which is equipped to administer such test in a reasonable manner  
112 that will ensure the accuracy of the specimen and maintain the  
113 privacy of the individual involved. The administration of a  
114 urine test does not preclude the administration of another type  
115 of test. The person must ~~shall~~ be told that his or her failure  
116 to submit to any lawful test of his or her urine will result in

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117 the suspension of his or her license ~~the person's privilege~~ to  
118 operate a motor vehicle for a period of 1 year for the first  
119 refusal, or for a period of 18 months if the driver license  
120 ~~driving privilege~~ of such person has been previously suspended  
121 or if he or she has previously been fined under s. 327.35215 as  
122 a result of a refusal to submit to a test or tests required  
123 under this chapter or chapter 327, and must ~~shall~~ also be told  
124 that if he or she refuses to submit to a lawful test of his or  
125 her urine and ~~his or her driving privilege has been previously~~  
126 ~~suspended or if he or she has previously been fined under s.~~  
127 ~~327.35215 for a prior refusal to submit to a lawful test of his~~  
128 ~~or her breath, urine, or blood as required under this chapter or~~  
129 ~~chapter 327,~~ he or she commits a misdemeanor ~~of the first~~  
130 ~~degree,~~ punishable as provided in s. 775.082 or s. 775.083, in  
131 addition to any other penalties provided by law. The refusal to  
132 submit to a urine test upon the request of a law enforcement  
133 officer as provided in this section is admissible into evidence  
134 in any criminal proceeding.

135 2. The Alcohol Testing Program within the Department of Law  
136 Enforcement is responsible for the regulation of the operation,  
137 inspection, and registration of breath test instruments utilized  
138 under the driving and boating under the influence provisions and  
139 related provisions located in this chapter and chapters 322 and  
140 327. The program is responsible for the regulation of the  
141 individuals who operate, inspect, and instruct on the breath  
142 test instruments utilized in the driving and boating under the  
143 influence provisions and related provisions located in this  
144 chapter and chapters 322 and 327. The program is further  
145 responsible for the regulation of blood analysts who conduct

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146 blood testing to be utilized under the driving and boating under  
147 the influence provisions and related provisions located in this  
148 chapter and chapters 322 and 327. The program shall:

149 a. Establish uniform criteria for the issuance of permits  
150 to breath test operators, agency inspectors, instructors, blood  
151 analysts, and instruments.

152 b. Have the authority to permit breath test operators,  
153 agency inspectors, instructors, blood analysts, and instruments.

154 c. Have the authority to discipline and suspend, revoke, or  
155 renew the permits of breath test operators, agency inspectors,  
156 instructors, blood analysts, and instruments.

157 d. Establish uniform requirements for instruction and  
158 curricula for the operation and inspection of approved  
159 instruments.

160 e. Have the authority to specify one approved curriculum  
161 for the operation and inspection of approved instruments.

162 f. Establish a procedure for the approval of breath test  
163 operator and agency inspector classes.

164 g. Have the authority to approve or disapprove breath test  
165 instruments and accompanying paraphernalia for use pursuant to  
166 the driving and boating under the influence provisions and  
167 related provisions located in this chapter and chapters 322 and  
168 327.

169 h. With the approval of the executive director of the  
170 Department of Law Enforcement, make and enter into contracts and  
171 agreements with other agencies, organizations, associations,  
172 corporations, individuals, or federal agencies as are necessary,  
173 expedient, or incidental to the performance of duties.

174 i. Issue final orders which include findings of fact and

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175 conclusions of law and which constitute final agency action for  
176 the purpose of chapter 120.

177 j. Enforce compliance with this section through civil or  
178 administrative proceedings.

179 k. Make recommendations concerning any matter within the  
180 purview of this section, this chapter, chapter 322, or chapter  
181 327.

182 l. Adopt ~~Promulgate~~ rules for the administration and  
183 implementation of this section, including definitions of terms.

184 m. Consult and cooperate with other entities for the  
185 purpose of implementing the mandates of this section.

186 n. Have the authority to approve the type of blood test  
187 utilized under the driving and boating under the influence  
188 provisions and related provisions located in this chapter and  
189 chapters 322 and 327.

190 o. Have the authority to specify techniques and methods for  
191 breath alcohol testing and blood testing utilized under the  
192 driving and boating under the influence provisions and related  
193 provisions located in this chapter and chapters 322 and 327.

194 p. Have the authority to approve repair facilities for the  
195 approved breath test instruments, including the authority to set  
196 criteria for approval.

197

198 ~~Nothing in This paragraph may not section shall~~ be construed to  
199 supersede provisions in this chapter and chapters 322 and 327.

200 The specifications in this section are derived from the power  
201 and authority previously and currently possessed by the  
202 Department of Law Enforcement and are enumerated to conform with  
203 the mandates of chapter 99-379, Laws of Florida.

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204 Section 3. Section 316.1939, Florida Statutes, is amended  
205 to read:

206 316.1939 Refusal to submit to testing; penalties.—

207 (1) A person who has refused to submit to a chemical or  
208 physical test of his or her breath or urine, as described in s.  
209 316.1932, commits a misdemeanor of the second degree, punishable  
210 as provided in s. 775.082 or s. 775.083, in addition to any  
211 other penalties provided by law, if and whose driving privilege  
212 was previously suspended or who was previously fined under s.  
213 327.35215 for a prior refusal to submit to a lawful test of his  
214 or her breath, urine, or blood required under this chapter or  
215 chapter 327, and:

216 (a) ~~Who~~ The arresting law enforcement officer had probable  
217 cause to believe the person was driving or in actual physical  
218 control of a motor vehicle in this state while under the  
219 influence of alcoholic beverages, chemical substances, or  
220 controlled substances;

221 (b) The person ~~who~~ was placed under lawful arrest for a  
222 violation of s. 316.193, unless such test was requested pursuant  
223 to s. 316.1932(1)(c);

224 (c) The person ~~who~~ was informed that, if he or she refused  
225 to submit to such test, his or her license ~~privilege~~ to operate  
226 a motor vehicle would be suspended for a period of 1 year or, in  
227 the case of a second or subsequent refusal, for a period of 18  
228 months; and

229 (d) The person, after having been so informed, still  
230 refuses ~~who was informed that a refusal~~ to submit to a lawful  
231 test of his or her breath or urine when requested to do so by a  
232 law enforcement or correctional officer.



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233       (2) A second or subsequent refusal to submit to a lawful  
234 test of breath, urine, or blood as specified in subsection (1)  
235 is a misdemeanor of the first degree, punishable as provided in  
236 s. 775.082 or s. 775.083, in addition to any other penalties  
237 provided by law, if his or her driving privilege has been  
238 previously suspended or if he or she has previously been fined  
239 under s. 327.35215 for a prior refusal to submit to a lawful  
240 test of his or her breath, urine, or blood as required under  
241 this chapter or chapter 327, is a misdemeanor of the first  
242 degree, punishable as provided in s. 775.082 or s. 775.083, in  
243 addition to any other penalties provided by law; and

244       ~~(e) Who, after having been so informed, refused to submit~~  
245 ~~to any such test when requested to do so by a law enforcement~~  
246 ~~officer or correctional officer~~

247  
248 ~~commits a misdemeanor of the first degree and is subject to~~  
249 ~~punishment as provided in s. 775.082 or s. 775.083.~~

250       (3)~~(2)~~ The disposition of any administrative proceeding  
251 that relates to the suspension of a person's driver license  
252 ~~driving privilege~~ does not affect a criminal action under this  
253 section.

254       (4)~~(3)~~ The disposition of a criminal action under this  
255 section does not affect any administrative proceeding that  
256 relates to the suspension of a person's driver license ~~driving~~  
257 ~~privilege~~. The department's records showing that a person's  
258 license has been previously suspended for a prior refusal to  
259 submit to a lawful test of his or her breath, urine, or blood is  
260 ~~shall be~~ admissible and creates ~~shall create~~ a rebuttable  
261 presumption of such suspension.

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262 Section 4. Section 316.19395, Florida Statutes, is created  
263 to read:

264 316.19395 Driving Under the Influence Diversion Programs.-

265 (1) Any judicial circuit may create a Driving Under the  
266 Influence Diversion Program. A judicial circuit that creates  
267 such a program shall publish the terms and conditions of the  
268 program on the website of the office of the state attorney.

269 (2) Each judicial circuit operating a Driving Under the  
270 Influence Diversion Program must report to the department  
271 persons who have successfully completed the program. The  
272 department shall notate the successful participation of the  
273 diversion program on the driving record of such persons.

274 (3) If, after successfully completing a diversion program,  
275 a person is charged with a new driving-under-the-influence  
276 offense, the person may not participate in a subsequent Driving  
277 Under the Influence Diversion Program.

278 Section 5. Subsection (1) of section 316.656, Florida  
279 Statutes, is amended to read:

280 316.656 Mandatory adjudication; prohibition against  
281 accepting plea to lesser included offense.-

282 (1) Notwithstanding ~~the provisions of~~ s. 948.01, a court  
283 may not ~~no court may~~ suspend, defer, or withhold adjudication of  
284 guilt or imposition of sentence for any violation of s. 316.193  
285 or s. 316.1939, for manslaughter resulting from the operation of  
286 a motor vehicle, or for vehicular homicide.

287 Section 6. This act shall take effect October 1, 2023.