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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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03/10/2016 05:43 PM

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Senator Gibson moved the following:

1           **Senate Substitute for Amendment (133622) (with title**  
2 **amendment)**

3  
4           Delete line 2865

5 and insert:

6           Section 68. Subsection (2), present paragraph (j) of  
7 subsection (6), and subsection (11) of section 316.193, Florida  
8 Statutes, are amended, present paragraphs (k), (l), and (m) of  
9 subsection (6) are redesignated as paragraphs (j), (k), and (l),  
10 respectively, and subsections (15) and (16) are added to that  
11 section, to read:



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12           316.193 Driving under the influence; penalties.-  
13           (2) (a) Except as provided in paragraph (b), subsection (3),  
14 or subsection (4), any person who is convicted of a violation of  
15 subsection (1) shall be punished:  
16           1. By a fine of:  
17           a. Not less than \$500 or more than \$1,000 for a first  
18 conviction.  
19           b. Not less than \$1,000 or more than \$2,000 for a second  
20 conviction; and  
21           2. By imprisonment for:  
22           a. Not more than 6 months for a first conviction.  
23           b. Not more than 9 months for a second conviction.  
24           3. For a second conviction, by mandatory placement for a  
25 period of at least 1 year, at the convicted person's sole  
26 expense, of an ignition interlock device approved by the  
27 department in accordance with s. 316.1938 upon all vehicles that  
28 are individually or jointly leased or owned and routinely  
29 operated by the convicted person, when the convicted person  
30 qualifies for a permanent or restricted license. Effective  
31 October 1, 2016, the court in the Fourth Judicial Circuit may  
32 order an offender to participate in a qualified sobriety and  
33 drug monitoring program, as defined in subsection (15) and  
34 authorized by 23 U.S.C. s. 164, under the pilot program in  
35 subsection (16), as an alternative to the placement of an  
36 ignition interlock device required by this section, when the  
37 convicted person qualifies for a permanent or restricted license  
38 ~~The installation of such device may not occur before July 1,~~  
39 ~~2003.~~  
40           (b)1. Any person who is convicted of a third violation of



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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. Effective October 1, 2016, the court in the  
52 Fourth Judicial Circuit may order an offender to participate in  
53 a qualified sobriety and drug monitoring program, as defined in  
54 subsection (15) and authorized by 23 U.S.C. s. 164, under the  
55 pilot program in subsection (16), as an alternative to the  
56 placement of an ignition interlock device required by this  
57 section, when the convicted person qualifies for a permanent or  
58 restricted license ~~The installation of such device may not occur~~  
59 ~~before July 1, 2003.~~

60 2. Any person who is convicted of a third violation of this  
61 section for an offense that occurs more than 10 years after the  
62 date of a prior conviction for a violation of this section shall  
63 be punished by a fine of not less than \$2,000 or more than  
64 \$5,000 and by imprisonment for not more than 12 months. In  
65 addition, the court shall order the mandatory placement for a  
66 period of at least 2 years, at the convicted person's sole  
67 expense, of an ignition interlock device approved by the  
68 department in accordance with s. 316.1938 upon all vehicles that  
69 are individually or jointly leased or owned and routinely



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70 operated by the convicted person, when the convicted person  
71 qualifies for a permanent or restricted license. Effective  
72 October 1, 2016, the court in the Fourth Judicial Circuit may  
73 order an offender to participate in a qualified sobriety and  
74 drug monitoring program, as defined in subsection (15) and  
75 authorized by 23 U.S.C. s. 164, under the pilot program in  
76 subsection (16), as an alternative to the placement of an  
77 ignition interlock device required by this section, when the  
78 convicted person qualifies for a permanent or restricted license  
79 ~~The installation of such device may not occur before July 1,~~  
80 ~~2003.~~

81 3. Any person who is convicted of a fourth or subsequent  
82 violation of this section, regardless of when any prior  
83 conviction for a violation of this section occurred, commits a  
84 felony of the third degree, punishable as provided in s.  
85 775.082, s. 775.083, or s. 775.084. However, the fine imposed  
86 for such fourth or subsequent violation may be not less than  
87 \$2,000.

88 (c) In addition to the penalties in paragraph (a), the  
89 court may order placement, at the convicted person's sole  
90 expense, of an ignition interlock device approved by the  
91 department in accordance with s. 316.1938 for at least 6  
92 continuous months upon all vehicles that are individually or  
93 jointly leased or owned and routinely operated by the convicted  
94 person if, at the time of the offense, the person had a blood-  
95 alcohol level or breath-alcohol level of .08 or higher.

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



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99           ~~(j)1. Notwithstanding the provisions of this section, s.~~  
100 ~~316.1937, and s. 322.2715 relating to ignition interlock devices~~  
101 ~~required for second or subsequent offenders, in order to~~  
102 ~~strengthen the pretrial and posttrial options available to~~  
103 ~~prosecutors and judges, the court may order, if deemed~~  
104 ~~appropriate, that a person participate in a qualified sobriety~~  
105 ~~and drug monitoring program, as defined in subparagraph 2., in~~  
106 ~~addition to the ignition interlock device requirement.~~  
107 ~~Participation shall be at the person's sole expense.~~

108           ~~2. As used in this paragraph, the term "qualified sobriety~~  
109 ~~and drug monitoring program" means an evidence-based program,~~  
110 ~~approved by the department, in which participants are regularly~~  
111 ~~tested for alcohol and drug use. As the court deems appropriate,~~  
112 ~~the program may monitor alcohol or drugs through one or more of~~  
113 ~~the following modalities: breath testing twice a day; continuous~~  
114 ~~transdermal alcohol monitoring in cases of hardship; or random~~  
115 ~~blood, breath, urine, or oral fluid testing. Testing modalities~~  
116 ~~that provide the best ability to sanction a violation as close~~  
117 ~~in time as reasonably feasible to the occurrence of the~~  
118 ~~violation should be given preference. This paragraph does not~~  
119 ~~preclude a court from ordering an ignition interlock device as a~~  
120 ~~testing modality.~~

121           ~~3. For purposes of this paragraph, the term "evidence-based~~  
122 ~~program" means a program that satisfies the requirements of at~~  
123 ~~least two of the following:~~

124           ~~a. The program is included in the federal registry of~~  
125 ~~evidence-based programs and practices.~~

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



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128           ~~e. The program has been documented as effective by informed~~  
129 ~~experts and other sources.~~

130  
131 For the purposes of this section, any conviction for a violation  
132 of s. 327.35; a previous conviction for the violation of former  
133 s. 316.1931, former s. 860.01, or former s. 316.028; or a  
134 previous conviction outside this state for driving under the  
135 influence, driving while intoxicated, driving with an unlawful  
136 blood-alcohol level, driving with an unlawful breath-alcohol  
137 level, or any other similar alcohol-related or drug-related  
138 traffic offense, is also considered a previous conviction for  
139 violation of this section. However, in satisfaction of the fine  
140 imposed pursuant to this section, the court may, upon a finding  
141 that the defendant is financially unable to pay either all or  
142 part of the fine, order that the defendant participate for a  
143 specified additional period of time in public service or a  
144 community work project in lieu of payment of that portion of the  
145 fine which the court determines the defendant is unable to pay.  
146 In determining such additional sentence, the court shall  
147 consider the amount of the unpaid portion of the fine and the  
148 reasonable value of the services to be ordered; however, the  
149 court may not compute the reasonable value of services at a rate  
150 less than the federal minimum wage at the time of sentencing.

151           (11) The Department of Highway Safety and Motor Vehicles is  
152 directed to adopt rules providing for the implementation of the  
153 use of ignition interlock devices and qualified sobriety and  
154 drug monitoring programs, as defined in subsection (15), to be  
155 used in the pilot program under subsection (16).

156           (15) As used in this chapter and chapter 322, the term:



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157        (a) "Qualified sobriety and drug monitoring program" means  
158 an evidence-based program approved by the department which  
159 authorizes a court or an agency with jurisdiction, as a  
160 condition of bond, sentence, probation, parole, or restricted  
161 driving privileges, to require a person who was arrested for,  
162 pleaded guilty to, or was convicted of driving under the  
163 influence of alcohol or drugs to be regularly tested for alcohol  
164 and drug use. As the court deems appropriate, the program shall  
165 monitor alcohol or drugs through one or more of the following  
166 modalities: breath testing twice a day at a testing location;  
167 continuous transdermal alcohol monitoring via an electronic  
168 monitoring device; random breath or urine testing; or drug patch  
169 or oral fluid testing. Testing modalities that provide the best  
170 ability to detect a violation as close in time as reasonably  
171 feasible to the occurrence of the violation should be given  
172 preference. Participation shall be at the person's sole expense.

173        (b) "Evidence-based program" means a program that satisfies  
174 the requirements of at least two of the following:

175            1. The program is included in the federal registry of  
176 evidence-based programs and practices.

177            2. The program has been reported in a peer-reviewed journal  
178 as having positive effects on the primary targeted outcome.

179            3. The program has been documented as effective by informed  
180 experts and other sources.

181        (16) The Fourth Judicial Circuit, in coordination with the  
182 department, shall implement a qualified sobriety and drug  
183 monitoring pilot program effective October 1, 2016, for offenses  
184 where an ignition interlock device is mandated under  
185 subparagraphs (2) (a)3., (2) (b)1., and (2) (b)2. The Fourth



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186 Judicial Circuit may order a qualified sobriety and drug  
187 monitoring program, as defined in subsection (15) and authorized  
188 by 23 U.S.C. s. 164, as an alternative to the ignition interlock  
189 device. The Fourth Judicial Circuit shall provide a report on  
190 the results of the pilot program to the Governor, the President  
191 of the Senate, and the Speaker of the House of Representatives  
192 by March 1, 2018.

193 Section 69. Subsection (1) of section 316.1937, Florida  
194 Statutes, is amended to read:

195 316.1937 Ignition interlock devices, requiring; unlawful  
196 acts.—

197 (1) In addition to any other authorized penalties, the  
198 court may require that any person who is convicted of driving  
199 under the influence in violation of s. 316.193 shall not operate  
200 a motor vehicle unless that vehicle is equipped with a  
201 functioning ignition interlock device certified by the  
202 department as provided in s. 316.1938, and installed in such a  
203 manner that the vehicle will not start if the operator's blood  
204 alcohol level is in excess of 0.025 percent or as otherwise  
205 specified by the court. The court may require the use of an  
206 approved ignition interlock device for a period of at least 6  
207 continuous months, if the person is permitted to operate a motor  
208 vehicle, whether or not the privilege to operate a motor vehicle  
209 is restricted, as determined by the court. The court, however,  
210 shall order placement of an ignition interlock device in those  
211 circumstances required by s. 316.193. Effective October 1, 2016,  
212 for offenses where an ignition interlock device is mandated  
213 under s. 316.193(2)(a)3., (2)(b)1., and (2)(b)2., the court in  
214 the Fourth Judicial Circuit may order a qualified sobriety and





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215 drug monitoring program, as defined in s. 316.193(15) and  
216 authorized by 23 U.S.C. s. 164, under the pilot program in s.  
217 316.193(16) as an alternative to the ignition interlock device,  
218 when the convicted person qualifies for a permanent or  
219 restricted license.

220 Section 70. Subsections (1), (3), and (4) of section  
221 322.2715, Florida Statutes, are amended to read:

222 322.2715 Ignition interlock device.—

223 (1) Before issuing a permanent or restricted driver license  
224 under this chapter, the department shall require the placement  
225 of a department-approved ignition interlock device for any  
226 person convicted of committing an offense of driving under the  
227 influence as specified in subsection (3), except that  
228 consideration may be given to those individuals having a  
229 documented medical condition that would prohibit the device from  
230 functioning normally. If a medical waiver has been granted for a  
231 convicted person seeking a restricted license, the convicted  
232 person is shall ~~is shall~~ not be entitled to a restricted license until  
233 the required ignition interlock device installation period under  
234 subsection (3) expires, in addition to the time requirements  
235 under s. 322.271. If a medical waiver has been approved for a  
236 convicted person seeking permanent reinstatement of the driver  
237 license, the convicted person must be restricted to an  
238 employment-purposes-only license and be supervised by a licensed  
239 DUI program until the required ignition interlock device  
240 installation period under subsection (3) expires. An interlock  
241 device shall be placed on all vehicles that are individually or  
242 jointly leased or owned and routinely operated by the convicted  
243 person. Effective October 1, 2016, if a court in the Fourth



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244 Judicial Circuit orders a qualified sobriety and drug monitoring  
245 program as defined in s. 316.193(15) and authorized by 23 U.S.C.  
246 s. 164 under the pilot program implemented under s. 316.193(16),  
247 the department shall use the monitoring program as an  
248 alternative to the placement of an ignition interlock device  
249 required by this section, when the convicted person qualifies  
250 for a permanent or restricted license.

251 (3) If the person is convicted of:

252 (a) A first offense of driving under the influence under s.  
253 316.193 and has an unlawful blood-alcohol level or breath-  
254 alcohol level as specified in s. 316.193(1), the ignition  
255 interlock device may be installed for at least 6 continuous  
256 months.

257 (b) A first offense of driving under the influence under s.  
258 316.193 and has an unlawful blood-alcohol level or breath-  
259 alcohol level as specified in s. 316.193(4), or if a person is  
260 convicted of a violation of s. 316.193 and was at the time of  
261 the offense accompanied in the vehicle by a person younger than  
262 18 years of age, the person shall have the ignition interlock  
263 device installed for at least 6 continuous months for the first  
264 offense and for at least 2 continuous years for a second  
265 offense.

266 (c) A second offense of driving under the influence, the  
267 ignition interlock device shall be installed for a period of at  
268 least 1 continuous year.

269 (d) A third offense of driving under the influence which  
270 occurs within 10 years after a prior conviction for a violation  
271 of s. 316.193, the ignition interlock device shall be installed  
272 for a period of at least 2 continuous years.



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273 (e) A third offense of driving under the influence which  
274 occurs more than 10 years after the date of a prior conviction,  
275 the ignition interlock device shall be installed for a period of  
276 at least 2 continuous years.

277 (f) A fourth or subsequent offense of driving under the  
278 influence, the ignition interlock device shall be installed for  
279 a period of at least 5 years.

280

281 Effective October 1, 2016, if a court in the Fourth Judicial  
282 Circuit orders a qualified sobriety and drug monitoring program  
283 as defined in s. 316.193(15) and authorized by 23 U.S.C. s. 164  
284 under the pilot program implemented under s. 316.193(16), the  
285 department shall use the monitoring program as an alternative to  
286 the placement of an ignition interlock device required by this  
287 section, when the convicted person qualifies for a permanent or  
288 restricted license.

289 (4) If the court fails to order the mandatory placement of  
290 the ignition interlock device or fails to order for the  
291 applicable period the mandatory placement of an ignition  
292 interlock device under s. 316.193 or s. 316.1937 at the time of  
293 imposing sentence or within 30 days thereafter, the department  
294 shall immediately require that the ignition interlock device be  
295 installed as provided in this section, except that consideration  
296 may be given to those individuals having a documented medical  
297 condition that would prohibit the device from functioning  
298 normally. Effective October 1, 2016, if a court in the Fourth  
299 Judicial Circuit orders a qualified sobriety and drug monitoring  
300 program as defined in s. 316.193(15) and authorized by 23 U.S.C.  
301 s. 164 under the pilot program implemented under s. 316.193(16),



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302 the department shall use the monitoring program as an  
303 alternative to the placement of an ignition interlock device  
304 required by this section, when the convicted person qualifies  
305 for a permanent or restricted license.

306 This subsection applies to the reinstatement of the driving  
307 privilege following a revocation, suspension, or cancellation  
308 that is based upon a conviction for the offense of driving under  
309 the influence which occurs on or after July 1, 2005.

310 Section 71. Except as otherwise expressly provided in this  
311 act, this act shall take effect on July 1, 2016.

312  
313 ===== T I T L E A M E N D M E N T =====

314 And the title is amended as follows:

315 Delete line 3163

316 and insert:

317 applicability; amending s. 316.193, F.S.; authorizing,  
318 as of a specified date, a specified court to order a  
319 certain qualified sobriety and drug monitoring program  
320 under a specified pilot program as an alternative to  
321 the placement of an ignition interlock device;  
322 deleting obsolete provisions; deleting provisions  
323 relating to a qualified sobriety and drug monitoring  
324 program; directing the department to adopt rules  
325 providing for the implementation of the use of certain  
326 qualified sobriety and drug monitoring programs;  
327 redefining the terms "qualified sobriety and drug  
328 monitoring program" and "evidence-based program";  
329 creating a qualified sobriety and drug monitoring  
330 pilot program effective on a specified date, subject



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331 to certain requirements; requiring a specified court  
332 to provide a report to the Governor and the  
333 Legislature by a specified date; amending s. 316.1937,  
334 F.S.; authorizing, as of a specified date, a specified  
335 court to order a certain qualified sobriety and drug  
336 monitoring program under a specified pilot program as  
337 an alternative to the placement of an ignition  
338 interlock device; amending s. 322.2715, F.S.;  
339 requiring the department to use a certain qualified  
340 sobriety and drug monitoring program as an alternative  
341 to the placement of an ignition interlock device as of  
342 a specified date under certain circumstances;  
343 providing effective dates.