



382316

LEGISLATIVE ACTION

Senate

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House

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Floor: WD/3R

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03/11/2016 10:25 AM

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Senator Gibson moved the following:

1 **Senate Amendment to Amendment (691108) (with title**
2 **amendment)**

3
4 Between lines 3116 and 3117
5 insert:

6 Section 79. 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 80. 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 81. 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),



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

310
311 ===== T I T L E A M E N D M E N T =====

312 And the title is amended as follows:

313 Delete line 3436

314 and insert:

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



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