

By Senator Simmons

9-01629-20

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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 permanent  
38 criminal history record associated with the offense while  
39 ensuring the person receives substance abuse treatment if  
40 necessary. The state attorney of the judicial circuit shall  
41 develop the policies and procedures of the pilot program,  
42 including program implementation and operation and the selection  
43 of approved program providers. In developing such policies and  
44 procedures, the state attorney shall consult local law  
45 enforcement agency representatives, the public defender, and  
46 local program providers. The state attorney of each judicial  
47 circuit shall operate that circuit's pilot program. Each  
48 judicial circuit shall publish the terms and conditions of the  
49 pilot program on the website of the office of the state  
50 attorney.

51 (2) ELIGIBILITY REQUIREMENTS.—

52 (a) A person charged with driving under the influence is  
53 eligible for participation in the 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 prior or pending felony conviction.

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

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

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

63 6. Did not, at the time of the offense, have a blood-  
64 alcohol level or breath-alcohol level of 0.20 or higher.

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

66 (b) For purposes of this subsection, the term "conviction"  
67 means a determination of guilt which is the result of a plea or  
68 trial, regardless of whether adjudication is withheld or a plea  
69 of nolo contendere is entered.

70 (3) PILOT PROGRAM REQUIREMENTS.—

71 (a) A person who participates in the pilot program must do  
72 so for 12 months, during which period he or she may not possess  
73 or consume alcohol, illegal drugs, or prescription drugs not  
74 prescribed for him or her and must complete the following as  
75 administered by an approved program provider:

76 1. Fifty hours of community service if, at the time of the  
77 offense, the person had a blood-alcohol level or breath-alcohol  
78 level of 0.15 or lower.

79 2. Seventy-five hours of community service if, at the time  
80 of the offense, the person had a blood-alcohol level or breath-  
81 alcohol level higher than 0.15 but lower than 0.20 or did not  
82 provide a blood or breath sample.

83 3. A substance abuse course conducted by a DUI program  
84 licensed by the department under s. 322.292, which shall include  
85 a psychosocial evaluation of the person, and any substance abuse  
86 treatment required by such program.

87 4. A victim's impact panel session, if such a panel exists

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88 within the judicial circuit, or a victim's impact class.

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

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

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

100 a. Ninety days if, at the time of the offense, the person  
101 had a blood-alcohol level or breath-alcohol level of 0.15 or  
102 lower.

103 b. One hundred eighty days if, at the time of the offense,  
104 the person had a blood-alcohol level or breath-alcohol level  
105 higher than 0.15 but lower than 0.20 or did not provide a blood  
106 or breath sample.

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

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

114 b. The person's family income is greater than 100 percent  
115 but at or below 149 percent of the federal poverty level as  
116 documented by written order of the court, the regular monthly

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117 leasing fee charged to all customers by the ignition interlock  
118 device provider shall be discounted for that person by 25  
119 percent.

120 3. A person who qualifies for a discounted monthly leasing  
121 fee pursuant to subparagraph 2. is not required to pay the cost  
122 of installation or deinstallation of the ignition interlock  
123 device.

124 (4) COMPLETION OF PILOT PROGRAM.—If a person complies with  
125 this section and successfully completes the pilot program, he or  
126 she shall be offered an agreement providing for a plea of guilty  
127 to the offense of reckless driving as provided in s. 316.192. A  
128 person who accepts such plea agreement is not subject to the  
129 provisions of this chapter relating to the offense of driving  
130 under the influence, and the trial judge shall withhold  
131 adjudication for reckless driving notwithstanding s. 316.656.

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

137 (6) ANNUAL REPORT.—By October 1 of each year beginning in  
138 2021, the state attorney of each judicial circuit shall report  
139 the results of the pilot program to the Governor, the President  
140 of the Senate, and the Speaker of the House of Representatives.  
141 The report shall include:

142 (a) The number of cases diverted from prosecution of  
143 driving under the influence.

144 (b) The number of persons who successfully completed the  
145 pilot program.

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

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

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

154 (7) STATEWIDE DATABASE.-By July 1, 2023, the department  
155 shall establish a statewide database of persons who participate  
156 in the pilot program. Each judicial circuit must provide monthly  
157 reports to the department of the number of persons who have  
158 elected to participate in the pilot program.

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