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## Model Language

### Ignition Interlock Device

#### Existing Florida Statute

##### **316.193 Driving under the influence; penalties. –**

(14) As used in this chapter, the term:

- (a) "Immobilization," "immobilizing," or "immobilize" means the act of installing a vehicle antitheft device on the steering wheel of a vehicle, the act of placing a tire lock or wheel clamp on a vehicle, or a governmental agency's act of taking physical possession of the license tag and vehicle registration rendering a vehicle legally inoperable to prevent any person from operating the vehicle pursuant to an order of impoundment or immobilization under subsection (6).
- (b) "Immobilization agency" or "immobilization agencies" means any person, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever that meets all of the conditions of subsection (13).
- (c) "Impoundment," "impounding," or "impound" means the act of storing a vehicle at a storage facility pursuant to an order of impoundment or immobilization under subsection (6) where the person impounding the vehicle exercises control, supervision, and responsibility over the vehicle.
- (d) "Person" means any individual, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever.

##### **316.1937 Ignition interlock devices, requiring; unlawful acts. –**

(2) If the court imposes the use of an ignition interlock device, the court shall:

- (a) Stipulate on the record the requirement for, and the period of, the use of a certified ignition interlock device.
- (b) Order that the records of the department reflect such requirement.
- (c) Order that an ignition interlock device be installed, as the court may determine necessary, on any vehicle owned or operated by the person.
- (d) Determine the person's ability to pay for installation of the device if the person claims inability to pay. If the court determines that the person is unable to pay for installation of the device, the court may order that any portion of a fine paid by the person for a violation of s. 316.193 shall be allocated to defray the costs of installing the device.
- (e) Require proof of installation of the device and periodic reporting to the department for verification of the operation of the device in the person's vehicle.

##### **316.656 Mandatory adjudication; prohibition against accepting plea to lesser included offense. –**

- 1) Notwithstanding the provisions of s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of s. 316.193, for manslaughter resulting from the operation of a motor vehicle, or for vehicular homicide.

- 2) (a) No trial judge may accept a plea of guilty to a lesser offense from a person charged under the provisions of this act who has been given a breath or blood test to determine blood or breath alcohol content, the results of which show a blood or breath alcohol content by weight of 0.15 percent or more.
  - (a) No trial judge may accept a plea of guilty to a lesser offense from a person charged with a violation of s. 316.193(3), manslaughter resulting from the operation of a motor vehicle, or vehicular homicide.

### Limitations of Existing Florida Statute

Florida's existing Ignition Interlock Device statute

## Proposed Model Legislative Language

Note: New language is underlined and deleted language is shown by a ~~strikethrough~~.

### **316.193 Driving under the influence; penalties. –**

- (14) As used in this chapter, the term:
- (a) “Conviction” means a determination of guilt which is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.
  - (b) ~~(a)~~ “Immobilization,” “immobilizing,” or “immobilize” means the act of installing a vehicle antitheft device on the steering wheel of a vehicle, the act of placing a tire lock or wheel clamp on a vehicle, or a governmental agency’s act of taking physical possession of the license tag and vehicle registration rendering a vehicle legally inoperable to prevent any person from operating the vehicle pursuant to an order of impoundment or immobilization under subsection (6).
  - (c) ~~(b)~~ “Immobilization agency” or “immobilization agencies” means any person, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever that meets all of the conditions of subsection (13).
  - (d) ~~(c)~~ “Impoundment,” “impounding,” or “impound” means the act of storing a vehicle at a storage facility pursuant to an order of impoundment or immobilization under subsection (6) where the person impounding the vehicle exercises control, supervision, and responsibility over the vehicle.
  - (e) ~~(d)~~ “Person” means any individual, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever.

### **316.1937 Ignition interlock devices, ~~requiring~~; unlawful acts. –**

- (2) If the court imposes the use of an ignition interlock device, the court shall:
- (a) Stipulate on the record the requirement for, and the period of, the use of a certified ignition interlock device.
  - (b) Order that the records of the department reflect such requirement.
  - (c) Order that an ignition interlock device be installed, as the court may determine necessary, on any vehicle owned or operated by the person.
    - 1. If the person claims inability to pay for an ignition interlock device, the following discounts on the monthly leasing fee must be provided:
      - a. If a person’s family income is at or below 100 percent of the federal poverty level, as documented by written order of the court, the regular monthly leasing fee charged to all customers by the interlock provider must be discounted for such person by 50 percent.
      - b. If the person’s family income is greater than 100 percent but at or below 149 percent of the federal poverty level, as documented by written order of the court, the regular monthly leasing fee charged to all customers by the interlock provider must be discounted for such person by 25 percent.
    - 2. A person who qualifies for a reduced fee pursuant to this paragraph is not required to pay the costs for installation or deinstallation of the device.
  - ~~(d) Determine the person’s ability to pay for installation of the device if the person claims inability to pay. If the court determines that the person is unable to pay for installation of the device, the court may order that any portion of a fine paid by the person for a violation of s. 316.193 shall be allocated to defray the costs of installing the device.~~
  - (d) ~~(e)~~ Require proof of installation of the device and periodic reporting to the department for verification of the operation of the device in the person’s vehicle.

**316.656 Mandatory adjudication; exceptions; prohibition against accepting plea to lesser included offense. –**

- 1) 

(a) ~~Notwithstanding the provisions of s. 948.01, a~~ court may not suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of s. 316.193, except as otherwise provided in this subsection; for manslaughter resulting from the operation of a motor vehicle; or for vehicular homicide.

(b) Upon agreement by the state attorney, the court may withhold adjudication of guilt for a first offense second degree misdemeanor violation of s. 316.193, other than a violation of s. 316.193(4), if the person does not have a prior withhold of adjudication for any other criminal offense and, in addition to the penalties prescribed in s. 316.193, the court orders either of the following:

  1. Installation of an ignition interlock device certified by the department as provided in s. 316.1938, or the person voluntarily installs such device, for at least 6 continuous months upon all vehicles that are routinely operated by the person. If the person fails to complete the entire term of the ignition interlock device program, the court must order an adjudication of guilt.
  2. Revocation of the person's driving privileges, or the person voluntarily relinquishes such privileges, for at least 6 continuous months during which time the person must participate in a qualified sobriety and drug monitoring program as defined in s. 316.193(6)(j). Such person is not eligible for a restricted driver license pursuant to s. 322.271 during this period of time. If the person operates a motor vehicle during the term of license revocation or fails to complete the entire term of a qualified sobriety and drug monitoring program, the court must order an adjudication of guilt.

(c) Notwithstanding paragraph (b), a person is eligible to petition the court to enter a withhold of adjudication 5 years after the date of his or her conviction for a first offense second degree misdemeanor violation of s. 316.193, other than a violation of s. 316.193(4), if such person does not have a prior withhold of adjudication for any other criminal offense and has not committed any additional criminal offenses for the period of 5 years after the date of his or her conviction.
- 2) 

(a) ~~A~~ No trial judge may not accept a plea of guilty to a lesser offense from a person charged under the provisions of this act who has been given a breath or blood test to determine blood or breath alcohol content, the results of which show a blood or breath alcohol content by weight of 0.15 percent or more.

(b) ~~A~~ No trial judge may not accept a plea of guilty to a lesser offense from a person charged with a violation of s. 316.193(3), manslaughter resulting from the operation of a motor vehicle, or vehicular homicide.

**Optional Provisions**

- (1)

**Rationale for Model Language Adjustment**

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