

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

IN RE: COURT-ORDERED IMPOUNDMENT OR
IMMOBILIZATION AS RELATED TO
COUNTY COURT DUI CONVICTIONS

ADMINISTRATIVE ORDER
NO. 6.7

WHEREAS, subsections (a), (b), (c), and (d) of Florida Statute § 316.193(6) provide that, in conjunction with a conviction for driving under the influence (DUI), the trial court must, at the time of sentencing, as a condition of probation, issue an order for the impoundment or immobilization of vehicles in accordance with the terms of subsections (a), (b), and (c); and

WHEREAS, Chapter 2009-206, Laws of Florida, has amended subsection (d) of Florida Statute § 316.193(6) so as to require that the order of impoundment or immobilization include the name and telephone number of all immobilization agencies meeting certain mandatory conditions and restrictions; and

WHEREAS, Chapter 2009-206, Laws of Florida, has created subsection (13) of Fla. Stat. § 316.193, which provides for those mandatory conditions and restrictions that shall apply to all immobilization agencies; and

WHEREAS, Chapter 2009-206, Laws of Florida, has created subsection (14) of Fla. Stat. § 316.193 so as to define the terms “immobilization,” “immobilization agencies,” and “impoundment;” and

WHEREAS, in creating subsection (14) of Fla. Stat. § 316.193, the legislature defined “immobilization” as including “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);” and

WHEREAS, in creating subsection (13) of Florida Statute § 316.193, the legislature

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exempted personnel of the court or the sheriff who immobilize vehicles from the mandatory conditions and restrictions that apply to immobilization agencies;

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the Twentieth Judicial Circuit of Florida under Fla. R. Jud. Admin. 2.215, it is ordered as follows:

1. Within the Twentieth Judicial Circuit, the County Probation Departments will act as the coordinator for the impoundment or immobilization of vehicles ordered pursuant to Fla. Stat. § 316.193.

2. Recognizing that Glades County is currently the only county within the Twentieth Judicial Circuit that does not use a County Probation Department associated with the Administrative Office of the Courts, it is directed that the Glades County Probation Department shall work in conjunction with Court Administration staff so as to effectuate the intent of this Administrative Order in Glades County.

3. Each County Probation Department shall maintain a list of immobilization agencies that meet the mandatory conditions and restrictions of Fla. Stat. § 316.193(13) and are willing to provide court-ordered immobilization services. This list shall be attached to or referenced in all orders of impoundment or immobilization, and shall otherwise be made available to all offenders subject to the entry of an order of impoundment or immobilization.

4. It shall be within the discretion of each County Probation Department to determine whether it is willing and able to conduct immobilization by making available to offenders the option 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 Fla. Stat. § 3216.193(6).

5. In all orders for impoundment or immobilization, the trial court shall include contact information for the County Probation Department.

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6. Subsection (d) of Fla. Stat. § 316.193(6) requires that, within seven (7) business days after the date that the court issues an order of impoundment or immobilization, the Clerk shall send notice by certified mail, return receipt requested, to the registered owner of each vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

7. To the extent that the vehicles must be identified in the order of impoundment or immobilization so as to give the County Probation Department or the immobilization agencies notice as to the vehicle subject to impoundment or immobilization, and to the extent that the owners and lien holders must be identified in the order of impoundment or immobilization so as to give the Clerk information necessary for providing notice, it shall be the responsibility of the defendant to provide the trial court with the necessary information identifying the vehicles, owners, and lien holders at the time of sentencing. If the defendant does not have complete information available at the time of sentencing, the defendant shall provide as much information as is available for entry on the face of the order, and shall supplement any missing information by following up thereafter with the County Probation Department.

8. If an exemption may be applicable pursuant to subsections (e), (f), (g), or (h) of Fla. Stat. § 316.193(6), the defendant or any person who owns but was not operating the vehicle when the offense occurred may provide the Court with evidence of the exemption at the time of sentencing and the Court may subsequently dismiss the order of impoundment or immobilization in accordance with subsections (e), (f), (g), or (h) of Fla. Stat. § 316.193(6).

9. After sentencing, the defendant or any person who owns but was not operating the vehicle when the offense occurred may file with the Court a motion to dismiss order of impoundment based upon the grounds set forth under subsections (e), (f), (g), or (h) of Fla. Stat. § 316.193(6), and request an evidentiary hearing.

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10. Attached hereto is a sample order of impoundment or immobilization that may be used by the trial court, in its discretion.

11. To the extent that any term or condition of this Administrative Order may be in conflict with any rule, statute, or law, the rule, statute, or law shall prevail.

DONE AND ORDERED in chambers in Fort Myers, Lee County, Florida, this 17 day of Sept, 2009.

STATE OF FLORIDA, COUNTY OF LEE

FILED FOR RECORD

This 32 Day of Sept 09 Record in Circuit
Book 53 Page 303-307 and Record Verified.

CHARLIE GREEN
Clerk Circuit Court

By William Montgomery
Deputy Clerk

G. Keith Cary
G. Keith Cary
Chief Judge

History. - New.

This document to be
a true and correct copy of the
original in my office,
Charlie Green, Clerk Circuit
Court, Lee County, Florida
Dated: 9/22/09

By William Montgomery
Deputy Clerk

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IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

State of Florida,

Plaintiff,

Case No. _____

v.

Defendant.

ORDER OF IMPOUNDMENT OR IMMOBILIZATION

The Court, having adjudicated Defendant guilty of driving under the influence (DUI) pursuant to Fla. Stat. §316.193, orders, as a condition of probation, the impoundment or immobilization of the vehicle(s) described below, pursuant to Fla. Stat. §316.193(6)(d):

Year, make, model, color: _____

VIN No. _____ Vehicle Tag No. _____ State _____

Owner's Name: _____ Address: _____ Ph. No. _____

Defendant's Name: _____ Address: _____ Ph. No. _____

Lien holder: _____ Address: _____ Ph. No. _____

The impoundment/immobilization shall be for a consecutive period of: ____10 days ____30 days ____90 days

The impoundment/immobilization must not be concurrent to any term of incarceration, and is a condition of probation. The impoundment/immobilization shall be concurrent with any driver's license revocation imposed under Fla. Stat. §322.28(2)(a).

All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle, unless the impoundment or immobilization order is dismissed. To the extent that impoundment or immobilization is conducted by an entity other than court personnel, the costs and fees for the impoundment or immobilization must be paid directly to the person impounding or immobilizing the vehicle. Fla. Stat. § 316.193(6)(i).

Dismissal of this order may be sought by motion pursuant to subsections (e), (f), (g), or (h) of Fla. Stat. §316.193(6).

Within seven (7) business days after the date that the Court issues this order, the Clerk shall send notice by certified mail, return receipt requested, to the registered owner of each vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle. Fla. Stat. §316.193(6)(d)

Defendant shall immediately, or immediately upon release from incarceration, if any, contact the County Probation Department at _____, phone no. _____ to obtain an up-to-date list of immobilization agencies qualified and available to fulfill the requirements of this order. At its discretion, the County Probation Department may offer, as an alternative, to immobilize the vehicle by taking physical possession of the license tag and vehicle registration.

DONE AND ORDERED this _____ day of _____, 20_____.

County Judge

cc: Defendant
Defense Attorney
State Attorney
County Probation Department

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