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Model Language

Definition of the Offense of Driving Under the Influence

Existing Florida Statute

316.193 Driving under the influence; penalties.—

- (1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:
 - (a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired;
 - (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
 - (c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

Limitations of Existing Florida Statute

Existing language in section 316.193 limits the offense of driving under the influence (DUI) to alcohol and those substances that are listed in 877.111 (inhalants) or 893 (controlled substances). Many prescription drugs, over-the-counter drugs, and novel psychoactive compounds that can cause significant impairment are not included. This results in persons that cannot be charged with DUI in the state of Florida that may be driving impaired under the influence of an impairing substance. This places Florida in the minority in the United States as 44 states, Puerto Rico, and the District of Columbia have "any impairing substance" or somewhat similar, more inclusive language to define the offense of impaired driving (e.g., DUI, DWI). If the goal of the DUI law is to improve safety by removing impaired drivers from the road, regardless of the substance that is causing the impairment, this more general, "any impairing substance" statutory language is imperative.

Proposed Model Legislative Language

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

316.193 Driving under the influence; penalties.—

- (1) A person commits ~~is guilty~~ of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:
- (a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, ~~or any substance controlled under chapter 893,~~ or any other impairing substance, or any combination thereof, when affected to the extent that the person's normal faculties are impaired;
 - (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
 - (c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.
- (9) A person who is arrested for a violation of this section may not be released from custody:
- (a) Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, ~~or any substance controlled under chapter 893,~~ or any other impairing substance, or any combination thereof, and affected to the extent that his or her normal faculties are impaired;
 - (b) Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; or
 - (c) Until 8 hours have elapsed from the time the person was arrested.
- (14) As used in the chapter, the term:
- (c) "Impairing substance" means any substance that, when taken into the human body, can impair, or diminish in some material respect, a person's normal faculties. These normal faculties include, but are not limited to, the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies, and, in general, normally perform the many mental and physical acts of daily life.

Rationale for Model Language Adjustment

A study published in 2019 in the Journal of Analytical Toxicology reported that over an 11 year period in Palm Beach County, Florida, 21% of all drug-positive blood specimens and 47% of all drug-positive urine specimens analyzed for DUI investigations contained at least one non-controlled impairing drug, often mixed with controlled impairing drugs.¹ Despite documentation of observed impairment with the concurrent identification of impairing drugs, an impaired driving charge could not be supported due to the phrasing of the law in Florida. The same study conducted a review of impaired driving laws in the United States and determined that Florida is one of only 6 states that do not have broader “any impairing substance” or similar language.² If the intent of DUID laws is to improve traffic safety by removing impaired drivers from the road, then more inclusive statutory language such as “any impairing substance” is more appropriate than linking the charge to a drug possession law framework or using other similarly restrictive language.

Published: 12/02/2021

¹ Tiscione, N.B., Alford, I.K., Miller, R., Shan, X., Yeatman, D.T. (2019) Driving Under the Influence of Drugs: When the Law Misses the Mark. Journal of Analytical Toxicology, 43, 138-143.

² Ibid.