

By the Committees on Transportation, Criminal Justice and
Senators Lee and Forman

306-2172A-98

1 A bill to be entitled
2 An act relating to the operation of vehicles or
3 vessels while under the influence; amending s.
4 316.193; providing for impoundment or
5 immobilization of a vehicle; providing
6 circumstances for dismissal of the impoundment
7 or immobilization order; amending s. 327.35,
8 F.S.; providing for impoundment or
9 immobilization of a vessel; providing
10 circumstances for dismissal of a court's
11 impoundment or immobilization order; providing
12 an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Subsection (6) of section 316.193, Florida
17 Statutes, is amended to read:

18 316.193 Driving under the influence; penalties.--

19 (6) With respect to any person convicted of a
20 violation of subsection (1), regardless of any penalty imposed
21 pursuant to subsection (2), subsection (3), or subsection (4):

22 (a) For the first conviction, the court shall place
23 the defendant on probation for a period not to exceed 1 year
24 and, as a condition of such probation, shall order the
25 defendant to participate in public service or a community work
26 project for a minimum of 50 hours; or the court may order
27 instead, that any defendant pay an additional fine of \$10 for
28 each hour of public service or community work otherwise
29 required, if, after consideration of the residence or location
30 of the defendant at the time public service or community work
31 is required, payment of the fine is in the best interests of

1 the state. However, the total period of probation and
2 incarceration may not exceed 1 year. The court must also, as a
3 condition of probation, order the impoundment or
4 immobilization of the vehicle that was operated by or in the
5 actual control of the defendant or any one vehicle registered
6 in the defendant's name at the time of impoundment or
7 immobilization, for a period of 10 days or for the unexpired
8 term of any lease or rental agreement that expires within 10
9 days. The impoundment or immobilization must not occur
10 concurrently with the incarceration of the defendant. The
11 impoundment or immobilization order may be dismissed in
12 accordance with paragraph (e), paragraph (f), or paragraph
13 (g).

14 (b) For the second conviction for an offense that
15 occurs within a period of 5 years after the date of a prior
16 conviction for violation of this section, the court shall
17 order imprisonment for not less than 10 days. The court must
18 also, as a condition of probation, order the impoundment or
19 immobilization of the vehicle that was operated by or in the
20 actual control of the defendant or any one vehicle registered
21 in the defendant's name at the time of impoundment or
22 immobilization, for a period of 30 days or for the unexpired
23 term of any lease or rental agreement that expires within 30
24 days. The impoundment or immobilization must not occur
25 concurrently with the incarceration of the defendant. The
26 impoundment or immobilization order may be dismissed in
27 accordance with paragraph (e), paragraph (f), or paragraph
28 (g). At least 48 hours of confinement must be consecutive.

29 (c) For the third or subsequent conviction for an
30 offense that occurs within a period of 10 years after the date
31 of a prior conviction for violation of this section, the court

1 shall order imprisonment for not less than 30 days. The court
2 must also, as a condition of probation, order the impoundment
3 or immobilization of the vehicle that was operated by or in
4 the actual control of the defendant or any one vehicle
5 registered in the defendant's name at the time of impoundment
6 or immobilization, for a period of 90 days or for the
7 unexpired term of any lease or rental agreement that expires
8 within 90 days. The impoundment or immobilization must not
9 occur concurrently with the incarceration of the defendant.
10 The impoundment or immobilization order may be dismissed in
11 accordance with paragraph (e), paragraph (f), or paragraph
12 (g).At least 48 hours of confinement must be consecutive.

13 (d) The court must at the time of sentencing the
14 defendant issue an order for the impoundment or immobilization
15 of a vehicle. Within 7 business days after the date that the
16 court issues the order of impoundment or immobilization, and
17 once again 30 business days before the actual impoundment or
18 immobilization of the vehicle, the clerk of the court must
19 send notice by certified mail, return receipt requested, to
20 the registered owner of each vehicle, if the registered owner
21 is a person other than the defendant, and to each person of
22 record claiming a lien against the vehicle.

23 (e) A person who owns but was not operating the
24 vehicle when the offense occurred may submit to the court a
25 police report indicating that the vehicle was stolen at the
26 time of the offense or documentation of having purchased the
27 vehicle after the offense was committed from an entity other
28 than the defendant or the defendant's agent. If the court
29 finds that the vehicle was stolen or that the sale was not
30 made to circumvent the order and allow the defendant continued
31 access to the vehicle, the order must be dismissed and the

1 owner of the vehicle will incur no costs. If the court denies
2 the request to dismiss the order of impoundment or
3 immobilization, the petitioner may request an evidentiary
4 hearing.

5 (f) A person who owns but was not operating the
6 vehicle when the offense occurred, and whose vehicle was
7 stolen or who purchased the vehicle after the offense was
8 committed directly from the defendant or the defendant's
9 agent, may request an evidentiary hearing to determine whether
10 the impoundment or immobilization should occur. If the court
11 finds that either the vehicle was stolen or the purchase was
12 made without knowledge of the offense, that the purchaser had
13 no relationship to the defendant other than through the
14 transaction, and that such purchase would not circumvent the
15 order and allow the defendant continued access to the vehicle,
16 the order must be dismissed and the owner of the vehicle will
17 incur no costs.

18 (g) The court shall also dismiss the order of
19 impoundment or immobilization of the vehicle if the court
20 finds that the family of the owner of the vehicle has no other
21 private means of transportation.

22 ~~(d) In addition to the penalty imposed under paragraph~~
23 ~~(a), paragraph (b), or paragraph (c), the court shall also~~
24 ~~order the impoundment or immobilization of the vehicle that~~
25 ~~was driven by, or in the actual physical control of, the~~
26 ~~offender, unless the court finds that the family of the owner~~
27 ~~of the vehicle has no other public or private means of~~
28 ~~transportation. The period of impoundment or immobilization is~~
29 ~~10 days, or, for the second conviction within 3 years, 30~~
30 ~~days, or, for the third conviction within 5 years, 90 days and~~
31 ~~may not be concurrent with probation or imprisonment. If the~~

1 ~~vehicle is leased or rented, the period of impoundment or~~
2 ~~immobilization may not extend beyond the expiration of the~~
3 ~~lease or rental agreement. Within 7 business days after the~~
4 ~~date that the court issues the order of impoundment or~~
5 ~~immobilization, the clerk of the court shall send notice by~~
6 ~~certified mail, return receipt requested, to the registered~~
7 ~~owner of the vehicle if the registered owner is a person other~~
8 ~~than the offender and to each person of record claiming a lien~~
9 ~~against the vehicle.~~

10 (h) All costs and fees for the impoundment or
11 immobilization, including the cost of notification, must be
12 paid by the owner of the vehicle or, if the vehicle is leased
13 or rented, by the person leasing or renting the vehicle,
14 unless the impoundment or immobilization order is dismissed.
15 All provisions of s. 713.78 shall apply.

16 (i) The person who owns a vehicle that is impounded or
17 immobilized under this paragraph, or a person who has a lien
18 of record against such a vehicle and who has not requested a
19 review of the impoundment pursuant to paragraph (e), paragraph
20 (f), or paragraph (g), may, within 10 days after the date that
21 person has knowledge of the location of the vehicle, file a
22 complaint in the county in which the owner resides to
23 determine whether the vehicle was wrongfully taken or withheld
24 from the owner or lienholder. Upon the filing of a complaint,
25 the owner or lienholder may have the vehicle released by
26 posting with the court a bond or other adequate security equal
27 to the amount of the costs and fees for impoundment or
28 immobilization, including towing or storage, to ensure the
29 payment of such costs and fees if the owner or lienholder does
30 not prevail. When the bond is posted and the fee is paid as
31 set forth in s. 28.24, the clerk of the court shall issue a

1 certificate releasing the vehicle. At the time of release,
2 after reasonable inspection, the owner or lienholder must give
3 a receipt to the towing or storage company indicating any loss
4 or damage to the vehicle or to the contents of the vehicle.

5 (j)~~(e)~~ A defendant, in the court's discretion, may be
6 required to serve all or any portion of a term of imprisonment
7 to which the defendant has been sentenced pursuant to this
8 section in a residential alcoholism treatment program or a
9 residential drug abuse treatment program. Any time spent in
10 such a program must be credited by the court toward the term
11 of imprisonment.

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13 For the purposes of this section, any conviction for a
14 violation of s. 327.35; a previous conviction for the
15 violation of former s. 316.1931, former s. 860.01, or former
16 s. 316.028; or a previous conviction outside this state for
17 driving under the influence, driving while intoxicated,
18 driving with an unlawful blood-alcohol level, driving with an
19 unlawful breath-alcohol level, or any other similar
20 alcohol-related or drug-related traffic offense, is also
21 considered a previous conviction for violation of this
22 section. However, in satisfaction of the fine imposed pursuant
23 to this section, the court may, upon a finding that the
24 defendant is financially unable to pay either all or part of
25 the fine, order that the defendant participate for a specified
26 additional period of time in public service or a community
27 work project in lieu of payment of that portion of the fine
28 which the court determines the defendant is unable to pay. In
29 determining such additional sentence, the court shall consider
30 the amount of the unpaid portion of the fine and the
31 reasonable value of the services to be ordered; however, the

1 court may not compute the reasonable value of services at a
2 rate less than the federal minimum wage at the time of
3 sentencing.

4 Section 2. Subsection (6) of section 327.35, Florida
5 Statutes, is amended to read:

6 327.35 Boating under the influence; penalties.--

7 (6) With respect to any person convicted of a
8 violation of subsection (1), regardless of any other penalty
9 imposed:

10 (a) For the first conviction, the court shall place
11 the defendant on probation for a period not to exceed 1 year
12 and, as a condition of such probation, shall order the
13 defendant to participate in public service or a community work
14 project for a minimum of 50 hours. The court must also, as a
15 condition of probation, order the impoundment or
16 immobilization of the vessel that was operated by or in the
17 actual control of the defendant or any one vehicle registered
18 in the defendant's name at the time of impoundment or
19 immobilization, for a period of 10 days or for the unexpired
20 term of any lease or rental agreement that expires within 10
21 days. The impoundment or immobilization must not occur
22 concurrently with the incarceration of the defendant. The
23 impoundment or immobilization order may be dismissed in
24 accordance with paragraph (e) or paragraph (f).The total
25 period of probation and incarceration may not exceed 1 year.

26 (b) For the second conviction for an offense that
27 occurs within a period of 5 years after the date of a prior
28 conviction for violation of this section, the court shall
29 order imprisonment for not less than 10 days. The court must
30 also, as a condition of probation, order the impoundment or
31 immobilization of the vessel that was operated by or in the

1 actual control of the defendant or any one vehicle registered
2 in the defendant's name at the time of impoundment or
3 immobilization, for a period of 30 days or for the unexpired
4 term of any lease or rental agreement that expires within 30
5 days. The impoundment or immobilization must not occur
6 concurrently with the incarceration of the defendant. The
7 impoundment or immobilization order may be dismissed in
8 accordance with paragraph (e) or paragraph (f).At least 48
9 hours of confinement must be consecutive.

10 (c) For the third or subsequent conviction for an
11 offense that occurs within a period of 10 years after the date
12 of a prior conviction for violation of this section, the court
13 shall order imprisonment for not less than 30 days. The court
14 must also, as a condition of probation, order the impoundment
15 or immobilization of the vessel that was operated by or in the
16 actual control of the defendant or any one vehicle registered
17 in the defendant's name at the time of impoundment or
18 immobilization, for a period of 90 days or for the unexpired
19 term of any lease or rental agreement that expires within 90
20 days. The impoundment or immobilization must not occur
21 concurrently with the incarceration of the defendant. The
22 impoundment or immobilization order may be dismissed in
23 accordance with paragraph (e) or paragraph (f).At least 48
24 hours of confinement must be consecutive.

25 (d) The court must at the time of sentencing the
26 defendant issue an order for the impoundment or immobilization
27 of a vessel. Within 7 business days after the date that the
28 court issues the order of impoundment, and once again 30
29 business days before the actual impoundment or immobilization
30 of the vessel, the clerk of the court must send notice by
31 certified mail, return receipt requested, to the registered

1 owner of each vessel, if the registered owner is a person
2 other than the defendant, and to each person of record
3 claiming a lien against the vessel.

4 (e) A person who owns but was not operating the vessel
5 when the offense occurred may submit to the court a police
6 report indicating that the vessel was stolen at the time of
7 the offense or documentation of having purchased the vessel
8 after the offense was committed from an entity other than the
9 defendant or the defendant's agent. If the court finds that
10 the vessel was stolen or that the sale was not made to
11 circumvent the order and allow the defendant continued access
12 to the vessel, the order must be dismissed and the owner of
13 the vessel will incur no costs. If the court denies the
14 request to dismiss the order of impoundment or immobilization,
15 the petitioner may request an evidentiary hearing.

16 (f) A person who owns but was not operating the vessel
17 when the offense occurred, and whose vessel was stolen or who
18 purchased the vessel after the offense was committed directly
19 from the defendant or the defendant's agent, may request an
20 evidentiary hearing to determine whether the impoundment or
21 immobilization should occur. If the court finds that either
22 the vessel was stolen or the purchase was made without
23 knowledge of the offense, that the purchaser had no
24 relationship to the defendant other than through the
25 transaction, and that such purchase would not circumvent the
26 order and allow the defendant continued access to the vessel,
27 the order must be dismissed and the owner of the vessel will
28 incur no costs.

29 ~~(d) In addition to any other penalty imposed, the~~
30 ~~court shall also order the impoundment or immobilization of~~
31 ~~the vessel that was operated by, or in the actual physical~~

1 ~~control of, the offender. The period of impoundment or~~
2 ~~immobilization is 10 days, or, for the second conviction~~
3 ~~within 3 years, 30 days, or, for the third conviction within 5~~
4 ~~years, 90 days and may not be concurrent with probation or~~
5 ~~imprisonment. If the vessel is leased or rented, the period of~~
6 ~~impoundment or immobilization may not extend beyond the~~
7 ~~expiration of the lease or rental agreement. Within 7 business~~
8 ~~days after the date that the court issues the order of~~
9 ~~impoundment or immobilization, the clerk of the court shall~~
10 ~~send notice by certified mail, return receipt requested, to~~
11 ~~the registered owner of the vessel if the registered owner is~~
12 ~~a person other than the offender and to each person of record~~
13 ~~claiming a lien against the vessel.~~

14 (g) All costs and fees for the impoundment or
15 immobilization, including the cost of notification, must be
16 paid by the owner of the vessel or, if the vessel is leased or
17 rented, by the person leasing or renting the vessel, unless
18 the impoundment or immobilization order is dismissed.

19 (h) The person who owns a vessel that is impounded or
20 immobilized under this paragraph, or a person who has a lien
21 of record against such a vessel and who has not requested a
22 review of the impoundment pursuant to paragraph (e) or
23 paragraph (f), may, within 10 days after the date that person
24 has knowledge of the location of the vessel, file a complaint
25 in the county in which the owner resides to determine whether
26 the vessel was wrongfully taken or withheld from the owner or
27 lienholder. Upon the filing of a complaint, the owner or
28 lienholder may have the vessel released by posting with the
29 court a bond or other adequate security equal to the amount of
30 the costs and fees for impoundment or immobilization,
31 including towing or storage, to ensure the payment of the

1 costs and fees if the owner or lienholder does not prevail.
2 When the bond is posted and the fee is paid as set forth in s.
3 28.24, the clerk of the court shall issue a certificate
4 releasing the vessel. At the time of release, after reasonable
5 inspection, the owner or lienholder must give a receipt to the
6 towing or storage company indicating any loss or damage to the
7 vessel or to the contents of the vessel.

8 (i)~~(e)~~ A defendant, in the court's discretion, may be
9 required to serve all or any portion of a term of imprisonment
10 to which the defendant has been sentenced pursuant to this
11 section in a residential alcoholism treatment program or a
12 residential drug abuse treatment program. Any time spent in
13 such a program must be credited by the court toward the term
14 of imprisonment.

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16 For the purposes of this section, any conviction for a
17 violation of s. 316.193, a previous conviction for the
18 violation of former s. 316.1931, former s. 860.01, or former
19 s. 316.028, or a previous conviction outside this state for
20 driving under the influence, driving while intoxicated,
21 driving with an unlawful blood-alcohol level, driving with an
22 unlawful breath-alcohol level, or any other similar
23 alcohol-related or drug-related traffic offense, is also
24 considered a previous conviction for violation of this
25 section.

26 Section 3. This act shall take effect upon becoming a
27 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 604

The CS allows the court to impound or immobilize a vehicle or vessel currently owned by a person convicted of a DUI offense where the vehicle used in the offense is not available.

The CS provides a process for dismissal of the impoundment or immobilization order against a vehicle or vessel used in the offense when the vehicle or vessel was stolen or has changed owners since the offense was committed.