

By the Committee on Corrections and Representatives
Betancourt and Constantine

1 A bill to be entitled
2 An act relating to driving and boating under
3 the influence; amending ss. 316.193 and 327.35,
4 F.S.; providing for a third degree felony
5 penalty for a third or subsequent conviction
6 for driving or boating under the influence;
7 reducing the blood-alcohol level or
8 breath-alcohol level for increased penalties
9 when a person is convicted under either of
10 these sections from 0.20 or higher to 0.16 or
11 higher and a minor accompanied the person at
12 the time of the offense; increasing present
13 penalties and fines to conform; amending s.
14 921.0022, F.S.; conforming provisions in the
15 sentencing guidelines; providing an effective
16 date.

17
18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Subsections (1), (2), (4), and (6) of
21 section 316.193, Florida Statutes, 1998 Supplement, are
22 amended to read:

23 316.193 Driving under the influence; penalties.--

24 (1) A person commits ~~is guilty of~~ the offense of
25 driving under the influence and is subject to punishment as
26 provided in subsection (2) if the person is driving or in
27 actual physical control of a vehicle within this state and:

28 (a) The person is under the influence of alcoholic
29 beverages, any chemical substance set forth in s. 877.111, or
30 any substance controlled under chapter 893, when affected to
31 the extent that the person's normal faculties are impaired;

1 (b) The person has a blood-alcohol level of 0.08 or
2 more grams of alcohol per 100 milliliters of blood; or
3 (c) The person has a breath-alcohol level of 0.08 or
4 more grams of alcohol per 210 liters of breath.
5 (2)(a) Except as provided in paragraph (b), subsection
6 (3), or subsection (4), any person who is convicted of a
7 violation of subsection (1) shall be punished:
8 1. By a fine of:
9 a. Not less than \$250 or more than \$500 for a first
10 conviction.
11 b. Not less than \$500 or more than \$1,000 for a second
12 conviction; and-
13 ~~c. Not less than \$1,000 or more than \$2,500 for a~~
14 ~~third conviction; and~~
15 2. By imprisonment for:
16 a. Not more than 6 months for a first conviction.
17 b. Not more than 9 months for a second conviction.
18 ~~c. Not more than 12 months for a third conviction.~~
19 (b) Any person who commits a violation of this section
20 and who has previously been convicted two or more times of any
21 ~~is convicted of a fourth or subsequent~~ violation of this
22 section is guilty of a felony of the third degree, punishable
23 as provided in s. 775.082, s. 775.083, or s. 775.084; however,
24 the fine imposed for such third ~~fourth~~ or subsequent violation
25 may be not less than \$2,500 ~~\$1,000~~.
26 (4) Any person who is convicted of a violation of
27 subsection (1) and who has a blood-alcohol level or
28 breath-alcohol level of 0.16 ~~0.20~~ or higher, or any person who
29 is convicted of a violation of subsection (1) and who at the
30 time of the offense was accompanied in the vehicle by a person
31 under the age of 18 years, shall be punished:

- 1 (a) By a fine of:
2 1. Not less than \$500 or more than \$1,000 for a first
3 conviction.
4 2. Not less than \$1,000 or more than \$2,000 for a
5 second conviction.
6 3. Not less than \$3,500~~\$2,000~~ or more than \$7,000
7 ~~\$5,000~~ for a third or subsequent conviction.

- 8 (b) By imprisonment for:
9 1. Not more than 9 months for a first conviction.
10 2. Not more than 12 months for a second conviction.
11 ~~3. Not more than 12 months for a third conviction.~~

12
13 For the purposes of this subsection, any conviction for a
14 violation of s. 327.35, only the instant offense is required
15 to be a violation of subsection (1) by a person who has a
16 blood-alcohol level or breath-alcohol level of 0.16 ~~0.20~~ or
17 higher.

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

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

1 incarceration may not exceed 1 year, unless restitution is
2 still owed. The probationary period may be extended for up to
3 4 additional years for the purpose of the defendant's
4 completing payment of restitution. The court must also, as a
5 condition of probation, order the impoundment or
6 immobilization of the vehicle that was operated by or in the
7 actual control of the defendant or any one vehicle registered
8 in the defendant's name at the time of impoundment or
9 immobilization, for a period of 10 days or for the unexpired
10 term of any lease or rental agreement that expires within 10
11 days. The impoundment or immobilization must not occur
12 concurrently with the incarceration of the defendant. The
13 impoundment or immobilization order may be dismissed in
14 accordance with paragraph (e), paragraph (f), or paragraph
15 (g).

16 Section 2. Subsections (1), (2), and (4) of section
17 327.35, Florida Statutes, 1998 Supplement, are amended to
18 read:

19 327.35 Boating under the influence; penalties;
20 "designated drivers".--

21 (1) A person commits ~~is guilty of~~ the offense of
22 boating under the influence and is subject to punishment as
23 provided in subsection (2) if the person is operating a vessel
24 within this state and:

25 (a) The person is under the influence of alcoholic
26 beverages, any chemical substance set forth in s. 877.111, or
27 any substance controlled under chapter 893, when affected to
28 the extent that the person's normal faculties are impaired;

29 (b) The person has a blood-alcohol level of 0.08 or
30 more grams of alcohol per 100 milliliters of blood; or
31

1 (c) The person has a breath-alcohol level of 0.08 or
2 more grams of alcohol per 210 liters of breath.

3 (2)(a) Except as provided in paragraph (b), subsection
4 (3), or subsection (4), any person who is convicted of a
5 violation of subsection (1) shall be punished:

6 1. By a fine of:

7 a. Not less than \$250 or more than \$500 for a first
8 conviction.

9 b. Not less than \$500 or more than \$1,000 for a second
10 conviction; and—

11 ~~c. Not less than \$1,000 or more than \$2,500 for a~~
12 ~~third conviction; and~~

13 2. By imprisonment for:

14 a. Not more than 6 months for a first conviction.

15 b. Not more than 9 months for a second conviction.

16 ~~c. Not more than 12 months for a third conviction.~~

17 (b) Any person who commits a violation of this section
18 and who has previously been convicted two or more times of any
19 ~~is convicted of a fourth or subsequent~~ violation of this
20 section is guilty of a felony of the third degree, punishable
21 as provided in s. 775.082, s. 775.083, or s. 775.084; however,
22 the fine imposed for such third ~~fourth~~ or subsequent violation
23 may not be less than \$2,500 ~~\$1,000~~.

24 (4) Any person who is convicted of a violation of
25 subsection (1) and who has a blood-alcohol level or
26 breath-alcohol level of 0.16 ~~0.20~~ or higher, or any person who
27 is convicted of a violation of subsection (1) and who at the
28 time of the offense was accompanied in the vessel by a person
29 under the age of 18 years, shall be punished:

30 (a) By a fine of:

31

- 1 1. Not less than \$500 or more than \$1,000 for a first
2 conviction.
3 2. Not less than \$1,000 or more than \$2,000 for a
4 second conviction.
5 3. Not less than \$3,500~~\$2,000~~ or more than \$7,000
6 ~~\$5,000~~ for a third or subsequent conviction.
7 (b) By imprisonment for:
8 1. Not more than 9 months for a first conviction.
9 2. Not more than 12 months for a second conviction.
10 ~~3. Not more than 12 months for a third conviction.~~

11
12 For the purposes of this subsection, only the instant offense
13 is required to be a violation of subsection (1) by a person
14 who has a blood-alcohol level or breath-alcohol level of 0.16
15 ~~0.20~~ or higher.

16 Section 3. Paragraph (f) of subsection (3) of section
17 921.0022, Florida Statutes, 1998 Supplement, is amended to
18 read:

19 921.0022 Criminal Punishment Code; offense severity
20 ranking chart.--

21 (3) OFFENSE SEVERITY RANKING CHART

23 Florida	Felony	
24 Statute	Degree	Description
25		
26		
27		(f) LEVEL 6
28 316.027(1)(b)	2nd	Accident involving death, failure 29 to stop; leaving scene.
30 316.193(2)(b)	3rd	Felony DUI, <u>3rd</u> 4th or subsequent 31 conviction.

1	<u>327.35(2)(b)</u>	<u>3rd</u>	<u>Felony BUI, 3rd or subsequent</u>
2			<u>conviction.</u>
3	775.0875(1)	3rd	Taking firearm from law
4			enforcement officer.
5	775.21(9)	3rd	Sexual predators; failure to
6			register; failure to renew
7			driver's license or
8			identification card.
9	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
10			without intent to kill.
11	784.021(1)(b)	3rd	Aggravated assault; intent to
12			commit felony.
13	784.041	3rd	Felony battery.
14	784.048(3)	3rd	Aggravated stalking; credible
15			threat.
16	784.048(5)	3rd	Aggravated stalking of person
17			under 16.
18	784.07(2)(c)	2nd	Aggravated assault on law
19			enforcement officer.
20	784.08(2)(b)	2nd	Aggravated assault on a person 65
21			years of age or older.
22	784.081(2)	2nd	Aggravated assault on specified
23			official or employee.
24	784.082(2)	2nd	Aggravated assault by detained
25			person on visitor or other
26			detainee.
27	784.083(2)	2nd	Aggravated assault on code
28			inspector.
29	787.02(2)	3rd	False imprisonment; restraining
30			with purpose other than those in
31			s. 787.01.

1	790.115(2)(d)	2nd	Discharging firearm or weapon on
2			school property.
3	790.161(2)	2nd	Make, possess, or throw
4			destructive device with intent to
5			do bodily harm or damage
6			property.
7	790.164(1)	2nd	False report of deadly explosive
8			or act of arson or violence to
9			state property.
10	790.19	2nd	Shooting or throwing deadly
11			missiles into dwellings, vessels,
12			or vehicles.
13	794.011(8)(a)	3rd	Solicitation of minor to
14			participate in sexual activity by
15			custodial adult.
16	794.05(1)	2nd	Unlawful sexual activity with
17			specified minor.
18	806.031(2)	2nd	Arson resulting in great bodily
19			harm to firefighter or any other
20			person.
21	810.02(3)(c)	2nd	Burglary of occupied structure;
22			unarmed; no assault or battery.
23	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
24			but less than \$100,000, grand
25			theft in 2nd degree.
26	812.13(2)(c)	2nd	Robbery, no firearm or other
27			weapon (strong-arm robbery).
28	817.034(4)(a)1.	1st	Communications fraud, value
29			greater than \$50,000.
30			
31			

1	817.4821(5)	2nd	Possess cloning paraphernalia
2			with intent to create cloned
3			cellular telephones.
4	825.102(1)	3rd	Abuse of an elderly person or
5			disabled adult.
6	825.102(3)(c)	3rd	Neglect of an elderly person or
7			disabled adult.
8	825.1025(3)	3rd	Lewd or lascivious molestation of
9			an elderly person or disabled
10			adult.
11	825.103(2)(c)	3rd	Exploiting an elderly person or
12			disabled adult and property is
13			valued at less than \$20,000.
14	827.03(1)	3rd	Abuse of a child.
15	827.03(3)(c)	3rd	Neglect of a child.
16	827.071(2)&(3)	2nd	Use or induce a child in a sexual
17			performance, or promote or direct
18			such performance.
19	836.05	2nd	Threats; extortion.
20	836.10	2nd	Written threats to kill or do
21			bodily injury.
22	843.12	3rd	Aids or assists person to escape.
23	847.0135(3)	3rd	Solicitation of a child, via a
24			computer service, to commit an
25			unlawful sex act.
26	914.23	2nd	Retaliation against a witness,
27			victim, or informant, with bodily
28			injury.
29	943.0435(6)	3rd	Sex offenders; failure to comply
30			with reporting requirements.
31			

1	944.35(3)(a)2.	3rd	Committing malicious battery upon
2			or inflicting cruel or inhuman
3			treatment on an inmate or
4			offender on community
5			supervision, resulting in great
6			bodily harm.
7	944.40	2nd	Escapes.
8	944.46	3rd	Harboring, concealing, aiding
9			escaped prisoners.
10	944.47(1)(a)5.	2nd	Introduction of contraband
11			(firearm, weapon, or explosive)
12			into correctional facility.
13	951.22(1)	3rd	Intoxicating drug, firearm, or
14			weapon introduced into county
15			facility.
16	Section 4.		This act shall take effect October 1, 1999.
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