

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Byrd offered the following:

13 **Amendment (with title amendment)**

14 On page 1, line 15,

16 insert:

17 Section 1. Subsections (2), (3), (4), and (9) of
18 section 316.193, Florida Statutes, are amended to read:

19 316.193 Driving under the influence; penalties.--

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

23 1. By a fine of:

24 a. Not less than \$250 or more than \$500 for a first
25 conviction.

26 b. Not less than \$500 or more than \$1,000 for a second
27 conviction.

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

30 2. By imprisonment for:

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

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

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

3 (b) Any person who is convicted of a third ~~fourth~~ or
4 subsequent violation of this section is guilty of a felony of
5 the third degree, punishable as provided in s. 775.082, s.
6 775.083, or s. 775.084; however, the fine imposed for such
7 third ~~fourth~~ or subsequent violation may be not less than
8 \$1,000.

9 (3) Any person:

10 (a) Who is in violation of subsection (1);

11 (b) Who operates a vehicle; and

12 (c) Who, by reason of such operation, causes or
13 contributes to the cause of:

14 1. Damage to the property or person of another commits
15 a misdemeanor of the first degree, punishable as provided in
16 s. 775.082 or s. 775.083.

17 2. Serious bodily injury to another, as defined in s.
18 316.1933, commits a felony of the third degree, punishable as
19 provided in s. 775.082, s. 775.083, or s. 775.084.

20 3. The death of any human being commits DUI
21 manslaughter, and commits:

22 a. A felony of the second degree, punishable as
23 provided in s. 775.082, s. 775.083, or s. 775.084.

24 b. A felony of the first degree, punishable as
25 provided in s. 775.082, s. 775.083, or s. 775.084, if:

26 (I) At the time of the crash, the person knew, or
27 should have known, that the crash occurred; and

28 (II) The person failed to give information and render
29 aid as required by s. 316.062.

30 (4) Any person who is convicted of a violation of
31 subsection (1) and who has a blood-alcohol level or

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1 breath-alcohol level of 0.20 or higher, or any person who is
2 convicted of a violation of subsection (1) and who at the time
3 of the offense was accompanied in the vehicle by a person
4 under the age of 18 years, shall be punished:

5 (a) By a fine of:

6 1. Not less than \$500 or more than \$1,000 for a first
7 conviction.

8 2. Not less than \$1,000 or more than \$2,000 for a
9 second conviction.

10 3. Not less than \$2,000 ~~or more than \$5,000~~ for a
11 third or subsequent conviction.

12 (b) By imprisonment for:

13 1. Not more than 9 months for a first conviction.

14 2. Not more than 12 months for a second conviction.

15 ~~3. Not more than 12 months for a third conviction.~~

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

21 (9)(a) A person who is arrested for a violation of
22 this section may not be released from custody:

23 1.(a) Until the person is no longer under the
24 influence of alcoholic beverages, any chemical substance set
25 forth in s. 877.111, or any substance controlled under chapter
26 893 and affected to the extent that his or her normal
27 faculties are impaired;

28 2.(b) Until the person's blood-alcohol level or
29 breath-alcohol level is less than 0.05; or

30 3.(c) Until 8 hours have elapsed from the time the
31 person was arrested.

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1 (b) The arresting officer may place the person in
2 protective custody pursuant to s. 397.6772 if:

3 1. The person has previously been convicted of a
4 violation of this section or s. 327.35;

5 2. The person's blood-alcohol level or breath-alcohol
6 level, as determined by a test conducted incident to the
7 person's arrest, was 0.20 or greater;

8 3. The person, by reason of operation of a motor
9 vehicle, has caused death or serious bodily injury as defined
10 in s. 316.1933; or

11 4. The person is on pretrial release for a previous
12 offense under this section or s. 327.35.

13
14 The election to place a person in protective custody may be
15 done at the time of arrest but transfer of the person to a
16 facility shall not occur prior to the conclusion of the time
17 period set forth in paragraph (a) or the time that the person
18 is released on bail, whichever is later. The provisions of
19 this paragraph are in addition to, not in lieu of, the
20 provisions of subsection (5). A court shall order any person
21 placed in protective custody pursuant to this paragraph who is
22 subsequently convicted of a violation of this section to pay
23 the reasonable costs of evaluation and treatment.

24 Section 2. Section 316.1932, Florida Statutes, is
25 amended to read:

26 316.1932 Breath, blood, and urine tests for alcohol,
27 chemical substances, or controlled substances; implied
28 consent; ~~refusal right to refuse.--~~

29 (1)(a) Any person who accepts the privilege extended
30 by the laws of this state of operating a motor vehicle within
31 this state is, by so operating such vehicle, deemed to have

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1 given his or her consent to submit to an approved chemical
2 test or physical test including, but not limited to, an
3 infrared light test of his or her breath for the purpose of
4 determining the alcoholic content of his or her blood or
5 breath, and to a urine test for the purpose of detecting the
6 presence of chemical substances as set forth in s. 877.111 or
7 controlled substances, if the person is lawfully arrested for
8 any offense allegedly committed while the person was driving
9 or was in actual physical control of a motor vehicle while
10 under the influence of alcoholic beverages, chemical
11 substances, or controlled substances. The chemical or
12 physical breath test must be incidental to a lawful arrest and
13 administered at the request of a law enforcement officer who
14 has reasonable cause to believe such person was driving or was
15 in actual physical control of the motor vehicle within this
16 state while under the influence of alcoholic beverages. The
17 urine test must be incidental to a lawful arrest and
18 administered at a detention facility or any other facility,
19 mobile or otherwise, which is equipped to administer such
20 tests at the request of a law enforcement officer who has
21 reasonable cause to believe such person was driving or was in
22 actual physical control of a motor vehicle within this state
23 while under the influence of controlled substances. The urine
24 test shall be administered at a detention facility or any
25 other facility, mobile or otherwise, which is equipped to
26 administer such tests in a reasonable manner that will ensure
27 the accuracy of the specimen and maintain the privacy of the
28 individual involved. The administration of one type of test
29 does not preclude the administration of another type of test.
30 The person shall be told that his or her failure to submit to
31 any lawful test of his or her breath or urine, or both, is a

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1 misdemeanor and, in addition, will result in the suspension of
2 the person's privilege to operate a motor vehicle for a period
3 of 1 year for a first refusal, or for a period of 18 months if
4 the driving privilege of such person has been previously
5 suspended as a result of a refusal to submit to such a test or
6 tests. The refusal to submit to a chemical or physical breath
7 test or to a urine test upon the request of a law enforcement
8 officer as provided in this section is admissible into
9 evidence in any criminal proceeding.

10 (b)1. The blood-alcohol level must be based upon grams
11 of alcohol per 100 milliliters of blood. The breath-alcohol
12 level must be based upon grams of alcohol per 210 liters of
13 breath.

14 2. An analysis of a person's breath, in order to be
15 considered valid under this section, must have been performed
16 substantially according to methods approved by the Department
17 of Law Enforcement. For this purpose, the department may
18 approve satisfactory techniques or methods. Any insubstantial
19 differences between approved techniques and actual testing
20 procedures in any individual case do not render the test or
21 test results invalid.

22 (c) Any person who accepts the privilege extended by
23 the laws of this state of operating a motor vehicle within
24 this state is, by operating such vehicle, deemed to have given
25 his or her consent to submit to an approved blood test for the
26 purpose of determining the alcoholic content of the blood or a
27 blood test for the purpose of determining the presence of
28 chemical substances or controlled substances as provided in
29 this section if there is reasonable cause to believe the
30 person was driving or in actual physical control of a motor
31 vehicle while under the influence of alcoholic beverages or

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1 chemical or controlled substances and the person appears for
2 treatment at a hospital, clinic, or other medical facility and
3 the administration of a breath or urine test is impractical or
4 impossible. As used in this paragraph, the term "other medical
5 facility" includes an ambulance or other medical emergency
6 vehicle. The blood test shall be performed in a reasonable
7 manner. Any person who is incapable of refusal by reason of
8 unconsciousness or other mental or physical condition is
9 deemed not to have withdrawn his or her consent to such test.
10 A blood test may be administered whether or not the person is
11 told that his or her failure to submit to such a blood test is
12 a misdemeanor and, in addition, will result in the suspension
13 of the person's privilege to operate a motor vehicle upon the
14 public highways of this state. Any person who is capable of
15 refusal shall be told that his or her failure to submit to
16 such a blood test is a misdemeanor and, in addition, will
17 result in the suspension of the person's privilege to operate
18 a motor vehicle for a period of 1 year for a first refusal, or
19 for a period of 18 months if the driving privilege of the
20 person has been suspended previously as a result of a refusal
21 to submit to such a test or tests. The refusal to submit to a
22 blood test upon the request of a law enforcement officer is
23 admissible in evidence in any criminal proceeding.

24 (d) If the arresting officer does not request a
25 chemical or physical breath test of the person arrested for
26 any offense allegedly committed while the person was driving
27 or was in actual physical control of a motor vehicle while
28 under the influence of alcoholic beverages or controlled
29 substances, such person may request the arresting officer to
30 have a chemical or physical test made of the arrested person's
31 breath or a test of the urine or blood for the purpose of

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1 determining the alcoholic content of the person's blood or
2 breath or the presence of chemical substances or controlled
3 substances; and, if so requested, the arresting officer shall
4 have the test performed.

5 (e)1. By applying for a driver's license and by
6 accepting and using a driver's license, the person holding the
7 driver's license is deemed to have expressed his or her
8 consent to the provisions of this section.

9 2. A nonresident or any other person driving in a
10 status exempt from the requirements of the driver's license
11 law, by his or her act of driving in such exempt status, is
12 deemed to have expressed his or her consent to the provisions
13 of this section.

14 3. A warning of the consent provision of this section
15 shall be printed above the signature line on each new or
16 renewed driver's license.

17 (f)1. The tests determining the weight of alcohol in
18 the defendant's blood or breath shall be administered at the
19 request of a law enforcement officer substantially in
20 accordance with rules of the Department of Law Enforcement.
21 Such rules must specify precisely the test or tests that are
22 approved by the Department of Law Enforcement for reliability
23 of result and ease of administration, and must provide an
24 approved method of administration which must be followed in
25 all such tests given under this section. However, the failure
26 of a law enforcement officer to request the withdrawal of
27 blood does not affect the admissibility of a test of blood
28 withdrawn for medical purposes.

29 2.a. Only a physician, certified paramedic, registered
30 nurse, licensed practical nurse, other personnel authorized by
31 a hospital to draw blood, or duly licensed clinical laboratory

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1 director, supervisor, technologist, or technician, acting at
2 the request of a law enforcement officer, may withdraw blood
3 for the purpose of determining its alcoholic content or the
4 presence of chemical substances or controlled substances
5 therein. However, the failure of a law enforcement officer to
6 request the withdrawal of blood does not affect the
7 admissibility of a test of blood withdrawn for medical
8 purposes.

9 b. Notwithstanding any provision of law pertaining to
10 the confidentiality of hospital records or other medical
11 records, if a health care provider, who is providing medical
12 care in a health care facility to a person injured in a motor
13 vehicle crash, becomes aware, as a result of any blood test
14 performed in the course of that medical treatment, that the
15 person's blood-alcohol level meets or exceeds the
16 blood-alcohol level specified in s. 316.193(1)(b), the health
17 care provider may notify any law enforcement officer or law
18 enforcement agency. Any such notice must be given within a
19 reasonable time after the health care provider receives the
20 test result. Any such notice shall be used only for the
21 purpose of providing the law enforcement officer with
22 reasonable cause to request the withdrawal of a blood sample
23 pursuant to this section.

24 c. The notice shall consist only of the name of the
25 person being treated, the name of the person who drew the
26 blood, the blood-alcohol level indicated by the test, and the
27 date and time of the administration of the test.

28 d. Nothing contained in s. 395.3025(4), s. 455.667, or
29 any applicable practice act affects the authority to provide
30 notice under this section, and the health care provider is not
31 considered to have breached any duty owed to the person under

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1 s. 395.3025(4), s. 455.667, or any applicable practice act by
2 providing notice or failing to provide notice. It shall not be
3 a breach of any ethical, moral, or legal duty for a health
4 care provider to provide notice or fail to provide notice.

5 e. A civil, criminal, or administrative action may not
6 be brought against any person or health care provider
7 participating in good faith in the provision of notice or
8 failure to provide notice as provided in this section. Any
9 person or health care provider participating in the provision
10 of notice or failure to provide notice as provided in this
11 section shall be immune from any civil or criminal liability
12 and from any professional disciplinary action with respect to
13 the provision of notice or failure to provide notice under
14 this section. Any such participant has the same immunity with
15 respect to participating in any judicial proceedings resulting
16 from the notice or failure to provide notice.

17 3. The person tested may, at his or her own expense,
18 have a physician, registered nurse, other personnel authorized
19 by a hospital to draw blood, or duly licensed clinical
20 laboratory director, supervisor, technologist, or technician,
21 or other person of his or her own choosing administer an
22 independent test in addition to the test administered at the
23 direction of the law enforcement officer for the purpose of
24 determining the amount of alcohol in the person's blood or
25 breath or the presence of chemical substances or controlled
26 substances at the time alleged, as shown by chemical analysis
27 of his or her blood or urine, or by chemical or physical test
28 of his or her breath. The failure or inability to obtain an
29 independent test by a person does not preclude the
30 admissibility in evidence of the test taken at the direction
31 of the law enforcement officer. The law enforcement officer

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1 shall not interfere with the person's opportunity to obtain
2 the independent test and shall provide the person with timely
3 telephone access to secure the test, but the burden is on the
4 person to arrange and secure the test at the person's own
5 expense.

6 4. Upon the request of the person tested, full
7 information concerning the test taken at the direction of the
8 law enforcement officer shall be made available to the person
9 or his or her attorney.

10 5. A hospital, clinical laboratory, medical clinic, or
11 similar medical institution or physician, certified paramedic,
12 registered nurse, licensed practical nurse, other personnel
13 authorized by a hospital to draw blood, or duly licensed
14 clinical laboratory director, supervisor, technologist, or
15 technician, or other person assisting a law enforcement
16 officer does not incur any civil or criminal liability as a
17 result of the withdrawal or analysis of a blood or urine
18 specimen, or the chemical or physical test of a person's
19 breath pursuant to accepted medical standards when requested
20 by a law enforcement officer, regardless of whether or not the
21 subject resisted administration of the test.

22 (2) The results of any test administered pursuant to
23 this section for the purpose of detecting the presence of any
24 controlled substance shall not be admissible as evidence in a
25 criminal prosecution for the possession of a controlled
26 substance.

27 (3) Notwithstanding any provision of law pertaining to
28 the confidentiality of hospital records or other medical
29 records, information relating to the alcoholic content of the
30 blood or breath or the presence of chemical substances or
31 controlled substances in the blood obtained pursuant to this

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1 section shall be released to a court, prosecuting attorney,
2 defense attorney, or law enforcement officer in connection
3 with an alleged violation of s. 316.193 upon request for such
4 information.

5 Section 3. Subsection (1) of section 316.1933, Florida
6 Statutes, is amended to read:

7 316.1933 Blood test for impairment or intoxication in
8 cases of death or serious bodily injury; right to use
9 reasonable force.--

10 (1)(a) ~~Notwithstanding any recognized ability to~~
11 ~~refuse to submit to the tests provided in s. 316.1932 or any~~
12 ~~recognized power to revoke the implied consent to such tests,~~
13 If a law enforcement officer has probable cause to believe
14 that a motor vehicle driven by or in the actual physical
15 control of a person under the influence of alcoholic
16 beverages, any chemical substances, or any controlled
17 substances has caused the death or serious bodily injury of a
18 human being, ~~such person shall submit, upon the request of a~~
19 law enforcement officer shall require the person driving or in
20 actual physical control of the motor vehicle to submit to a
21 test of the person's blood for the purpose of determining the
22 alcoholic content thereof or the presence of chemical
23 substances as set forth in s. 877.111 or any substance
24 controlled under chapter 893. The law enforcement officer may
25 use reasonable force if necessary to require such person to
26 submit to the administration of the blood test. The blood
27 test shall be performed in a reasonable manner.
28 Notwithstanding s. 316.1932, the testing required by this
29 paragraph need not be incidental to a lawful arrest of the
30 person.

31 (b) The term "serious bodily injury" means an injury

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1 to any person, including the driver, which consists of a
2 physical condition that creates a substantial risk of death,
3 serious personal disfigurement, or protracted loss or
4 impairment of the function of any bodily member or organ.

5 (c) The law enforcement officer shall offer any person
6 subject to a blood test under this subsection the opportunity
7 to submit to an approved chemical test of the person's breath
8 and, if the person submits to the test and a valid reading is
9 obtained, the blood test shall be waived. This paragraph
10 shall not apply to any person who is unconscious or whose
11 mental or physical condition does not allow the administration
12 of a breath test or any person whom the law enforcement
13 officer has probable cause to believe was operating a motor
14 vehicle under the influence of any chemical substances as set
15 forth in s. 877.111 or any controlled substances.

16 Section 4. Section 316.1939, Florida Statutes, is
17 created to read:

18 316.1939 Refusal to submit to testing; penalties.--

19 (1) Any person who has refused to submit to a chemical
20 or physical test of his or her breath, blood, or urine, as
21 described in s. 316.1932, and:

22 (a) Whom the arresting law enforcement officer had
23 probable cause to believe was driving or in actual physical
24 control of a motor vehicle in this state while under the
25 influence of alcoholic beverages, chemical substances, or
26 controlled substances;

27 (b) Who was placed under lawful arrest for a violation
28 of s. 316.193, unless such test was requested pursuant to s.
29 316.1932(1)(c);

30 (c) Who was informed that if he or she refused to
31 submit to such test his or her privilege to operate a motor

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1 vehicle would be suspended for a period of 1 year or, in the
2 case of a second or subsequent refusal, for a period of 18
3 months, and that the refusal to submit to such test is a
4 misdemeanor; and

5 (d) Who, after having been so informed, refused to
6 submit to any such test when requested to do so by a law
7 enforcement officer or correctional officer

8
9 commits a misdemeanor of the first degree and is subject to
10 punishment as provided in s. 775.082 or s. 775.083.

11 (2) The disposition of any administrative proceeding
12 that relates to the suspension of a person's driving privilege
13 does not affect a criminal action under this section.

14 (3) The disposition of a criminal action under this
15 section does not affect any administrative proceeding that
16 relates to the suspension of a person's driving privilege.

17 Section 5. Subsections (2), (3), (4), and (8) of
18 section 327.35, Florida Statutes, are amended to read:

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

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

24 1. By a fine of:

25 a. Not less than \$250 or more than \$500 for a first
26 conviction.

27 b. Not less than \$500 or more than \$1,000 for a second
28 conviction-

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

31 2. By imprisonment for:

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- 1 a. Not more than 6 months for a first conviction.
- 2 b. Not more than 9 months for a second conviction.
- 3 ~~c. Not more than 12 months for a third conviction.~~
- 4 (b) Any person who is convicted of a third ~~fourth~~ or
- 5 subsequent violation of this section is guilty of a felony of
- 6 the third degree, punishable as provided in s. 775.082, s.
- 7 775.083, or s. 775.084; however, the fine imposed for such
- 8 third ~~fourth~~ or subsequent violation may not be less than
- 9 \$1,000.
- 10 (3) Any person:
- 11 (a) Who is in violation of subsection (1);
- 12 (b) Who operates a vessel; and
- 13 (c) Who, by reason of such operation, causes or
- 14 contributes to the cause of:
- 15 1. Damage to the property or person of another commits
- 16 a misdemeanor of the first degree, punishable as provided in
- 17 s. 775.082 or s. 775.083.
- 18 2. Serious bodily injury to another, as defined in s.
- 19 327.353 ~~316.1933~~, commits a felony of the third degree,
- 20 punishable as provided in s. 775.082, s. 775.083, or s.
- 21 775.084.
- 22 3. The death of any human being commits BUI
- 23 manslaughter, and commits:
- 24 a. A felony of the second degree, punishable as
- 25 provided in s. 775.082, s. 775.083, or s. 775.084.
- 26 b. A felony of the first degree, punishable as
- 27 provided in s. 775.082, s. 775.083, or s. 775.084, if:
- 28 (I) At the time of the accident, the person knew, or
- 29 should have known, that the accident occurred; and
- 30 (II) The person failed to give information and render
- 31 aid as required by s. 327.30 ~~316.062~~.

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This sub-subparagraph does not require that the person knew that the accident resulted in injury or death.

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

(a) By a fine of:

1. Not less than \$500 or more than \$1,000 for a first conviction.

2. Not less than \$1,000 or more than \$2,000 for a second conviction.

3. Not less than \$2,000 ~~or more than \$5,000~~ for a third or subsequent conviction.

(b) By imprisonment for:

1. Not more than 9 months for a first conviction.

2. Not more than 12 months for a second conviction.

~~3. Not more than 12 months for a third conviction.~~

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

(8)(a) A person who is arrested for a violation of this section may not be released from custody:

1.(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 and affected to the extent that his or her normal

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1 faculties are impaired;

2 2.(b) Until the person's blood-alcohol level or
3 breath-alcohol level is less than 0.05; or

4 3.(c) Until 8 hours have elapsed from the time the
5 person was arrested.

6 (b) The arresting officer may place the person in
7 protective custody pursuant to s. 397.6772 if:

8 1. The person has previously been convicted of a
9 violation of this section or s. 316.193;

10 2. The person's blood-alcohol level or breath-alcohol
11 level, as determined by a test conducted incident to the
12 person's arrest, was 0.20 or greater;

13 3. The person, by reason of operation of a vessel, has
14 caused death or serious bodily injury as defined in s.
15 327.353; or

16 4. The person is on pretrial release for a previous
17 offense under this section or s. 316.193.

18
19 The election to place a person in protective custody may be
20 done at the time of arrest but transfer of the person to a
21 facility shall not occur prior to the conclusion of the time
22 period set forth in paragraph (a). The provisions of this
23 paragraph are in addition to, not in lieu of, the provisions
24 of subsection (5). A court shall order any person placed in
25 protective custody pursuant to this paragraph, who is
26 subsequently convicted of a violation of this section, to pay
27 the reasonable costs of evaluation and treatment.

28 Section 6. Section 327.352, Florida Statutes, is
29 amended to read:

30 327.352 Breath, blood, and urine tests for alcohol,
31 chemical substances, or controlled substances; implied

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1 consent; refusal ~~right to refuse~~.--

2 (1)(a) The Legislature declares that the operation of
3 a vessel is a privilege that must be exercised in a reasonable
4 manner. In order to protect the public health and safety, it
5 is essential that a lawful and effective means of reducing the
6 incidence of boating while impaired or intoxicated be
7 established. Therefore, any person who accepts the privilege
8 extended by the laws of this state of operating a vessel
9 within this state is, by so operating such vessel, deemed to
10 have given his or her consent to submit to an approved
11 chemical test or physical test including, but not limited to,
12 an infrared light test of his or her breath for the purpose of
13 determining the alcoholic content of his or her blood or
14 breath, and to a urine test for the purpose of detecting the
15 presence of chemical substances as set forth in s. 877.111 or
16 controlled substances, if the person is lawfully arrested for
17 any offense allegedly committed while the person was operating
18 a vessel while under the influence of alcoholic beverages,
19 chemical substances, or controlled substances. The chemical
20 or physical breath test must be incidental to a lawful arrest
21 and administered at the request of a law enforcement officer
22 who has reasonable cause to believe such person was operating
23 the vessel within this state while under the influence of
24 alcoholic beverages. The urine test must be incidental to a
25 lawful arrest and administered at a detention facility or any
26 other facility, mobile or otherwise, which is equipped to
27 administer such tests at the request of a law enforcement
28 officer who has reasonable cause to believe such person was
29 operating a vessel within this state while under the influence
30 of controlled substances. The urine test shall be administered
31 at a detention facility or any other facility, mobile or

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1 otherwise, which is equipped to administer such tests in a
2 reasonable manner that will ensure the accuracy of the
3 specimen and maintain the privacy of the individual involved.
4 The administration of one type of test does not preclude the
5 administration of another type of test. The person shall be
6 told that his or her failure to submit to any lawful test of
7 his or her breath or urine, or both, is a misdemeanor and, in
8 addition, will result in a civil penalty of \$500. The refusal
9 to submit to a chemical or physical breath or urine test upon
10 the request of a law enforcement officer as provided in this
11 section is admissible into evidence in any criminal
12 proceeding.

13 (b)1. The blood-alcohol level must be based upon grams
14 of alcohol per 100 milliliters of blood. The breath-alcohol
15 level must be based upon grams of alcohol per 210 liters of
16 breath.

17 2. An analysis of a person's breath, in order to be
18 considered valid under this section, must have been performed
19 substantially according to methods approved by the Department
20 of Law Enforcement. For this purpose, the department may
21 approve satisfactory techniques or methods. Any insubstantial
22 differences between approved techniques and actual testing
23 procedures in any individual case do not render the test or
24 test results invalid.

25 (c) Any person who accepts the privilege extended by
26 the laws of this state of operating a vessel within this state
27 is, by operating such vessel, deemed to have given his or her
28 consent to submit to an approved blood test for the purpose of
29 determining the alcoholic content of the blood or a blood test
30 for the purpose of determining the presence of chemical
31 substances or controlled substances as provided in this

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1 section if there is reasonable cause to believe the person was
2 operating a vessel while under the influence of alcoholic
3 beverages or chemical or controlled substances and the person
4 appears for treatment at a hospital, clinic, or other medical
5 facility and the administration of a breath or urine test is
6 impractical or impossible. As used in this paragraph, the term
7 "other medical facility" includes an ambulance or other
8 medical emergency vehicle. The blood test shall be performed
9 in a reasonable manner. Any person who is incapable of
10 refusal by reason of unconsciousness or other mental or
11 physical condition is deemed not to have withdrawn his or her
12 consent to such test. Any person who is capable of refusal
13 shall be told that his or her failure to submit to such a
14 blood test is a misdemeanor and, in addition, will result in a
15 civil penalty of \$500. The refusal to submit to a blood test
16 upon the request of a law enforcement officer shall be
17 admissible in evidence in any criminal proceeding.

18 (d) If the arresting officer does not request a
19 chemical or physical breath test of the person arrested for
20 any offense allegedly committed while the person was operating
21 a vessel while under the influence of alcoholic beverages or
22 controlled substances, the person may request the arresting
23 officer to have a chemical or physical test made of the
24 arrested person's breath or a test of the urine or blood for
25 the purpose of determining the alcoholic content of the
26 person's blood or breath or the presence of chemical
27 substances or controlled substances; and, if so requested, the
28 arresting officer shall have the test performed.

29 (e)1. The tests determining the weight of alcohol in
30 the defendant's blood or breath shall be administered at the
31 request of a law enforcement officer substantially in

Amendment No. ____ (for drafter's use only)

1 accordance with rules of the Department of Law Enforcement.
2 Such rules must specify precisely the test or tests that are
3 approved by the Department of Law Enforcement for reliability
4 of result and ease of administration, and must provide an
5 approved method of administration which must be followed in
6 all such tests given under this section. However, the failure
7 of a law enforcement officer to request the withdrawal of
8 blood does not affect the admissibility of a test of blood
9 withdrawn for medical purposes.

10 2. Only a physician, certified paramedic, registered
11 nurse, licensed practical nurse, other personnel authorized by
12 a hospital to draw blood, or duly licensed clinical laboratory
13 director, supervisor, technologist, or technician, acting at
14 the request of a law enforcement officer, may withdraw blood
15 for the purpose of determining its alcoholic content or the
16 presence of chemical substances or controlled substances
17 therein. However, the failure of a law enforcement officer to
18 request the withdrawal of blood does not affect the
19 admissibility of a test of blood withdrawn for medical
20 purposes.

21 3. The person tested may, at his or her own expense,
22 have a physician, registered nurse, other personnel authorized
23 by a hospital to draw blood, or duly licensed clinical
24 laboratory director, supervisor, technologist, or technician,
25 or other person of his or her own choosing administer an
26 independent test in addition to the test administered at the
27 direction of the law enforcement officer for the purpose of
28 determining the amount of alcohol in the person's blood or
29 breath or the presence of chemical substances or controlled
30 substances at the time alleged, as shown by chemical analysis
31 of his or her blood or urine, or by chemical or physical test

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1 of his or her breath. The failure or inability to obtain an
2 independent test by a person does not preclude the
3 admissibility in evidence of the test taken at the direction
4 of the law enforcement officer. The law enforcement officer
5 shall not interfere with the person's opportunity to obtain
6 the independent test and shall provide the person with timely
7 telephone access to secure the test, but the burden is on the
8 person to arrange and secure the test at the person's own
9 expense.

10 4. Upon the request of the person tested, full
11 information concerning the test taken at the direction of the
12 law enforcement officer shall be made available to the person
13 or his or her attorney.

14 5. A hospital, clinical laboratory, medical clinic, or
15 similar medical institution or physician, certified paramedic,
16 registered nurse, licensed practical nurse, other personnel
17 authorized by a hospital to draw blood, or duly licensed
18 clinical laboratory director, supervisor, technologist, or
19 technician, or other person assisting a law enforcement
20 officer does not incur any civil or criminal liability as a
21 result of the withdrawal or analysis of a blood or urine
22 specimen, or the chemical or physical test of a person's
23 breath pursuant to accepted medical standards when requested
24 by a law enforcement officer, regardless of whether or not the
25 subject resisted administration of the test.

26 (2) The results of any test administered pursuant to
27 this section for the purpose of detecting the presence of any
28 controlled substance shall not be admissible as evidence in a
29 criminal prosecution for the possession of a controlled
30 substance.

31 (3) Notwithstanding any provision of law pertaining to

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1 the confidentiality of hospital records or other medical
2 records, information relating to the alcoholic content of the
3 blood or breath or the presence of chemical substances or
4 controlled substances in the blood obtained pursuant to this
5 section shall be released to a court, prosecuting attorney,
6 defense attorney, or law enforcement officer in connection
7 with an alleged violation of s. 327.35 upon request for such
8 information.

9 Section 7. Subsection (1) of section 327.353, Florida
10 Statutes, is amended to read:

11 327.353 Blood test for impairment or intoxication in
12 cases of death or serious bodily injury; right to use
13 reasonable force.--

14 ~~(1)(a) Notwithstanding any recognized ability to~~
15 ~~refuse to submit to the tests provided in s. 327.352 or any~~
16 ~~recognized power to revoke the implied consent to such tests,~~
17 If a law enforcement officer has probable cause to believe
18 that a vessel operated by a person under the influence of
19 alcoholic beverages, any chemical substances, or any
20 controlled substances has caused the death or serious bodily
21 injury of a human being, ~~the person shall submit, upon the~~
22 ~~request of a law enforcement officer~~ shall require the person
23 operating or in actual physical control of the vessel to
24 submit to a test of the person's blood for the purpose of
25 determining the alcoholic content thereof or the presence of
26 chemical substances as set forth in s. 877.111 or any
27 substance controlled under chapter 893. The law enforcement
28 officer may use reasonable force if necessary to require the
29 person to submit to the administration of the blood test. The
30 blood test shall be performed in a reasonable manner.
31 Notwithstanding s. 327.352, the testing required by this

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1 paragraph need not be incidental to a lawful arrest of the
2 person.

3 (b) The term "serious bodily injury" means an injury
4 to any person, including the operator, which consists of a
5 physical condition that creates a substantial risk of death,
6 serious personal disfigurement, or protracted loss or
7 impairment of the function of any bodily member or organ.

8 (c) The law enforcement officer shall offer any person
9 subject to a blood test under this subsection the opportunity
10 to submit to an approved chemical test of the person's breath
11 and, if the person submits to the test and a valid reading is
12 obtained, the blood test shall be waived. This paragraph shall
13 not apply to any person who is unconscious or whose mental or
14 physical condition does not allow the administration of a
15 breath test or any person whom the law enforcement officer has
16 probable cause to believe was operating a vessel under the
17 influence of any chemical substances as set forth in s.
18 877.111 or any controlled substances.

19 Section 8. Section 327.359, Florida Statutes, is
20 created to read:

21 327.359 Refusal to submit to testing;
22 penalties.-- Any person who has refused to submit to a
23 chemical or physical test of his or her breath, blood, or
24 urine, as described in s. 327.352, and:

25 (1) Whom the arresting law enforcement officer had
26 probable cause to believe was operating or in actual physical
27 control of a vessel in this state while under the influence of
28 alcoholic beverages, chemical substances, or controlled
29 substances;

30 (2) Who was placed under lawful arrest for a violation
31 of s. 327.35, unless such test was requested pursuant to s.

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1 327.352(1)(c);

2 (3) Who was informed that if he or she refused to
3 submit to such test he or she is subject to a \$500 fine; and
4 that the refusal to submit to such test is a misdemeanor; and

5 (4) Who, after having been so informed, refused to
6 submit to any such test when requested to do so by a law
7 enforcement officer or correctional officer

8
9 commits a misdemeanor of the first degree and is subject to
10 punishment as provided in s. 775.082 or s. 775.083.

11 Section 9. Section 397.6755, Florida Statutes, is
12 created to read:

13 397.6755 Evidence of criteria for involuntary
14 admissions and involuntary treatment; funding.--

15 (1) In addition to any other ground that may give rise
16 to a finding that a person has lost the power of self-control
17 with respect to substance use and is likely to inflict
18 physical harm on himself or herself or another, a court may
19 find that a person has lost the power of self-control with
20 respect to substance use and is likely to inflict physical
21 harm on himself or herself or another if the person has been
22 arrested for a violation of s. 316.193 or s. 327.35, and:

23 (a) The person has previous to the arrest been
24 convicted of a violation of s. 316.193 or s. 327.35;

25 (b) The person's blood-alcohol level or breath-alcohol
26 level, as determined by a test conducted incident to the
27 person's arrest, was 0.20 or greater;

28 (c) The person, by reason of operation of a motor
29 vehicle or a vessel, has caused death or serious bodily injury
30 as defined in s. 316.1933 or s. 327.353; or

31 (d) The person is on pretrial release for a previous

Amendment No. ____ (for drafter's use only)

1 offense under s. 316.193 or s. 327.35.
 2 (2) Any person who meets the criteria for involuntary
 3 admission pursuant to s. 397.675, who was placed in protective
 4 custody pursuant to s. 316.193(9)(b) or s. 327.35(8)(b), and
 5 who is a qualified resident as defined in s. 212.055(4)(d)
 6 shall have the costs of evaluation and treatment paid from the
 7 fund established pursuant to s. 212.055(4)(e). A court shall
 8 order any person whose care is paid for under this subsection,
 9 who is subsequently convicted of a violation of s. 316.193 or
 10 s. 327.35, to reimburse the provider of the services for the
 11 reasonable cost of the services provided and, if the person is
 12 unable to reimburse the provider, a civil judgment in favor of
 13 such fund shall be entered.

14 Section 10. Paragraphs (f) and (i) of subsection (3)
 15 of section 921.0022, Florida Statutes, are amended to read:
 16 921.0022 Criminal Punishment Code; offense severity
 17 ranking chart.--

18 (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	
Statute	Degree	Description
		(f) LEVEL 6
316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
316.193(2)(b)	3rd	Felony DUI, <u>3rd</u> 4th or subsequent conviction.
<u>327.35(2)(b)</u>	<u>3rd</u>	<u>Felony BUI, 3rd or subsequent conviction.</u>

31

Amendment No. ____ (for drafter's use only)

1	775.0875(1)	3rd	Taking firearm from law
2			enforcement officer.
3	775.21(10)	3rd	Sexual predators; failure to
4			register; failure to renew
5			driver's license or
6			identification card.
7	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
8			without intent to kill.
9	784.021(1)(b)	3rd	Aggravated assault; intent to
10			commit felony.
11	784.041	3rd	Felony battery.
12	784.048(3)	3rd	Aggravated stalking; credible
13			threat.
14	784.048(5)	3rd	Aggravated stalking of person
15			under 16.
16	784.07(2)(c)	2nd	Aggravated assault on law
17			enforcement officer.
18	784.08(2)(b)	2nd	Aggravated assault on a person 65
19			years of age or older.
20	784.081(2)	2nd	Aggravated assault on specified
21			official or employee.
22	784.082(2)	2nd	Aggravated assault by detained
23			person on visitor or other
24			detainee.
25	784.083(2)	2nd	Aggravated assault on code
26			inspector.
27	787.02(2)	3rd	False imprisonment; restraining
28			with purpose other than those in
29			s. 787.01.
30	790.115(2)(d)	2nd	Discharging firearm or weapon on
31			school property.

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1	790.161(2)	2nd	Make, possess, or throw
2			destructive device with intent to
3			do bodily harm or damage
4			property.
5	790.164(1)	2nd	False report of deadly explosive
6			or act of arson or violence to
7			state property.
8	790.19	2nd	Shooting or throwing deadly
9			missiles into dwellings, vessels,
10			or vehicles.
11	794.011(8)(a)	3rd	Solicitation of minor to
12			participate in sexual activity by
13			custodial adult.
14	794.05(1)	2nd	Unlawful sexual activity with
15			specified minor.
16	800.04(5)(d)	3rd	Lewd or lascivious molestation;
17			victim 12 years of age or older
18			but less than 16 years; offender
19			less than 18 years.
20	800.04(6)(b)	2nd	Lewd or lascivious conduct;
21			offender 18 years of age or
22			older.
23	806.031(2)	2nd	Arson resulting in great bodily
24			harm to firefighter or any other
25			person.
26	810.02(3)(c)	2nd	Burglary of occupied structure;
27			unarmed; no assault or battery.
28	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
29			but less than \$100,000, grand
30			theft in 2nd degree.
31			

HOUSE AMENDMENT

Bill No. CS/CS/HB 113

Amendment No. ____ (for drafter's use only)

1	812.13(2)(c)	2nd	Robbery, no firearm or other
2			weapon (strong-arm robbery).
3	817.034(4)(a)1.	1st	Communications fraud, value
4			greater than \$50,000.
5	817.4821(5)	2nd	Possess cloning paraphernalia
6			with intent to create cloned
7			cellular telephones.
8	825.102(1)	3rd	Abuse of an elderly person or
9			disabled adult.
10	825.102(3)(c)	3rd	Neglect of an elderly person or
11			disabled adult.
12	825.1025(3)	3rd	Lewd or lascivious molestation of
13			an elderly person or disabled
14			adult.
15	825.103(2)(c)	3rd	Exploiting an elderly person or
16			disabled adult and property is
17			valued at less than \$20,000.
18	827.03(1)	3rd	Abuse of a child.
19	827.03(3)(c)	3rd	Neglect of a child.
20	827.071(2)&(3)	2nd	Use or induce a child in a sexual
21			performance, or promote or direct
22			such performance.
23	836.05	2nd	Threats; extortion.
24	836.10	2nd	Written threats to kill or do
25			bodily injury.
26	843.12	3rd	Aids or assists person to escape.
27	847.0135(3)	3rd	Solicitation of a child, via a
28			computer service, to commit an
29			unlawful sex act.
30	914.23	2nd	Retaliation against a witness,
31			victim, or informant, with bodily

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1			injury.
2	943.0435(9)	3rd	Sex offenders; failure to comply
3			with reporting requirements.
4	944.35(3)(a)2.	3rd	Committing malicious battery upon
5			or inflicting cruel or inhuman
6			treatment on an inmate or
7			offender on community
8			supervision, resulting in great
9			bodily harm.
10	944.40	2nd	Escapes.
11	944.46	3rd	Harboring, concealing, aiding
12			escaped prisoners.
13	944.47(1)(a)5.	2nd	Introduction of contraband
14			(firearm, weapon, or explosive)
15			into correctional facility.
16	951.22(1)	3rd	Intoxicating drug, firearm, or
17			weapon introduced into county
18			facility.
19			(i) LEVEL 9
20	316.193		
21	(3)(c)3.b.	1st	DUI manslaughter; failing to
22			render aid or give information.
23	<u>327.35(3)(c)3.b.</u>	<u>1st</u>	<u>BUI manslaughter; failing to</u>
24			<u>render aid or give information.</u>
25	782.04(1)	1st	Attempt, conspire, or solicit to
26			commit premeditated murder.
27	782.04(3)	1st,PBL	Accomplice to murder in
28			connection with arson, sexual
29			battery, robbery, burglary, and
30			other specified felonies.
31			

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1	782.051(1)	1st	Attempted felony murder while
2			perpetrating or attempting to
3			perpetrate a felony enumerated in
4			s. 782.04(3).
5	782.07(2)	1st	Aggravated manslaughter of an
6			elderly person or disabled adult.
7	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
8			reward or as a shield or hostage.
9	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
10			or facilitate commission of any
11			felony.
12	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
13			interfere with performance of any
14			governmental or political
15			function.
16	787.02(3)(a)	1st	False imprisonment; child under
17			age 13; perpetrator also commits
18			aggravated child abuse, sexual
19			battery, or lewd or lascivious
20			battery, molestation, conduct, or
21			exhibition.
22	790.161	1st	Attempted capital destructive
23			device offense.
24	794.011(2)	1st	Attempted sexual battery; victim
25			less than 12 years of age.
26	794.011(2)	Life	Sexual battery; offender younger
27			than 18 years and commits sexual
28			battery on a person less than 12
29			years.
30	794.011(4)	1st	Sexual battery; victim 12 years
31			or older, certain circumstances.

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1	794.011(8)(b)	1st	Sexual battery; engage in sexual
2			conduct with minor 12 to 18 years
3			by person in familial or
4			custodial authority.
5	800.04(5)(b)	1st	Lewd or lascivious molestation;
6			victim less than 12 years;
7			offender 18 years or older.
8	812.13(2)(a)	1st,PBL	Robbery with firearm or other
9			deadly weapon.
10	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
11			deadly weapon.
12	827.03(2)	1st	Aggravated child abuse.
13	847.0145(1)	1st	Selling, or otherwise
14			transferring custody or control,
15			of a minor.
16	847.0145(2)	1st	Purchasing, or otherwise
17			obtaining custody or control, of
18			a minor.
19	859.01	1st	Poisoning food, drink, medicine,
20			or water with intent to kill or
21			injure another person.
22	893.135	1st	Attempted capital trafficking
23			offense.
24	893.135(1)(a)3.	1st	Trafficking in cannabis, more
25			than 10,000 lbs.
26	893.135		
27	(1)(b)1.c.	1st	Trafficking in cocaine, more than
28			400 grams, less than 150
29			kilograms.
30	893.135		
31	(1)(c)1.c.	1st	Trafficking in illegal drugs,

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1 more than 28 grams, less than 30
2 kilograms.

3 893.135

4 (1)(d)1.c. 1st Trafficking in phencyclidine,
5 more than 400 grams.

6 893.135

7 (1)(e)1.c. 1st Trafficking in methaqualone, more
8 than 25 kilograms.

9 893.135

10 (1)(f)1.c. 1st Trafficking in amphetamine, more
11 than 200 grams.

12 Section 11. Section 938.07, Florida Statutes, is
13 amended to read:

14 938.07 Driving or boating under the
15 influence.--Notwithstanding any other provision of s. 316.193
16 or s. 327.35, a court cost of \$135 shall be added to any fine
17 imposed pursuant to s. 316.193 or s. 327.35, of which \$25
18 shall be deposited in the Emergency Medical Services Trust
19 Fund, \$50 shall be deposited in the Criminal Justice Standards
20 and Training Trust Fund of the Department of Law Enforcement
21 to be used for operational expenses in conducting the
22 statewide criminal analysis laboratory system established in
23 s. 943.32, and \$60 shall be deposited in the Brain and Spinal
24 Cord Injury Rehabilitation Trust Fund created in s. 381.79
25 ~~413.613~~.

26

27

28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 On page 1, line 3, after license;

31

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1 insert:
2 amending s. 316.193, F.S.; reducing the number
3 of convictions required for a felony DUI;
4 amending conditions for conviction in cases of
5 accident, serious bodily injury, or death;
6 removing a cross reference; allowing a law
7 enforcement officer to place a person in
8 protective custody under certain circumstances;
9 requiring a person placed in protective custody
10 to pay reasonable costs of evaluation and
11 treatment under certain circumstances; amending
12 s. 316.1932, F.S.; requiring a law enforcement
13 officer to inform a person that refusal to
14 submit to certain tests is a misdemeanor;
15 amending s. 316.1933, F.S.; requiring a person
16 to submit to a blood test under certain
17 circumstances; providing that the test need not
18 be incidental to a lawful arrest; providing
19 that a breath alcohol test may substitute for a
20 blood alcohol test under certain circumstances;
21 creating s. 316.1939, F.S.; providing a penalty
22 for refusing to submit to a chemical test of
23 breath, urine, or blood; providing application;
24 amending s. 327.35, F.S.; reducing the number
25 of convictions required for a felony BUI;
26 amending conditions for conviction in cases of
27 accident, serious bodily injury, or death;
28 correcting cross references; allowing a law
29 enforcement officer to place a person in
30 protective custody under certain circumstances;
31 requiring a person placed in protective custody

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1 to pay reasonable costs of evaluation and
2 treatment under certain circumstances; amending
3 s. 327.352, F.S.; requiring a law enforcement
4 officer to inform a person that refusal to
5 submit to certain tests is a misdemeanor;
6 amending s. 327.353, F.S.; requiring a person
7 to submit to a blood test under certain
8 circumstances; providing that the test need not
9 be incidental to a lawful arrest; providing
10 that a breath alcohol test may substitute for a
11 blood alcohol test under certain circumstances;
12 creating s. 327.359, F.S.; providing a penalty
13 for refusing to submit to a chemical test of
14 breath, urine, or blood; providing application;
15 creating s. 397.6755, F.S.; specifying grounds
16 for which a court may determine that criteria
17 exist for involuntary admission and treatment
18 of certain persons; requiring payment for such
19 evaluation and treatment from a certain fund;
20 requiring persons placed in such involuntary
21 custody to reimburse the provider of services
22 under certain circumstances; amending s.
23 921.0022, F.S.; including certain BUI offenses
24 within the offense severity ranking chart;
25 amending s. 938.07, F.S.; providing for
26 application of a fee to persons found guilty of
27 boating under the influence; correcting a cross
28 reference;
29
30
31