

By Senator Diaz-Balart

37-1190-00

See HB 983

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

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

1 Be It Enacted by the Legislature of the State of Florida:

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

5 316.193 Driving under the influence; penalties.--

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

9 1. By a fine of:

10 a. Not less than \$250 or more than \$500 for a first
11 conviction.

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

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

16 2. By imprisonment for:

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

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

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

20 (b) Any person who is convicted of a third ~~fourth~~ or
21 subsequent violation of this section is guilty of a felony of
22 the third degree, punishable as provided in s. 775.082, s.
23 775.083, or s. 775.084; however, the fine imposed for such
24 third ~~fourth~~ or subsequent violation may be not less than
25 \$1,000.

26 (3) Any person:

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

28 (b) Who operates a vehicle; and

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

31

- 1 1. Damage to the property or person of another commits
2 a misdemeanor of the first degree, punishable as provided in
3 s. 775.082 or s. 775.083.
- 4 2. Serious bodily injury to another, as defined in s.
5 316.1933, commits a felony of the third degree, punishable as
6 provided in s. 775.082, s. 775.083, or s. 775.084.
- 7 3. The death of any human being commits DUI
8 manslaughter, and commits:
- 9 a. A felony of the second degree, punishable as
10 provided in s. 775.082, s. 775.083, or s. 775.084.
- 11 b. A felony of the first degree, punishable as
12 provided in s. 775.082, s. 775.083, or s. 775.084, if:
- 13 (I) At the time of the crash, the person knew, or
14 should have known, that the crash occurred; and
- 15 (II) The person failed to give information and render
16 aid as required by s. 316.062.
- 17 (4) Any person who is convicted of a violation of
18 subsection (1) and who has a blood-alcohol level or
19 breath-alcohol level of 0.20 or higher, or any person who is
20 convicted of a violation of subsection (1) and who at the time
21 of the offense was accompanied in the vehicle by a person
22 under the age of 18 years, shall be punished:
- 23 (a) By a fine of:
- 24 1. Not less than \$500 or more than \$1,000 for a first
25 conviction.
- 26 2. Not less than \$1,000 or more than \$2,000 for a
27 second conviction.
- 28 3. Not less than \$2,000 ~~or more than \$5,000~~ for a
29 third or subsequent conviction.
- 30 (b) By imprisonment for:
- 31 1. Not more than 9 months for a first conviction.

- 1 2. Not more than 12 months for a second conviction.
2 ~~3. Not more than 12 months for a third conviction.~~

3
4 For the purposes of this subsection, ~~any conviction for a~~
5 ~~violation of s. 327.35~~, only the instant offense is required
6 to be a violation of subsection (1) by a person who has a
7 blood-alcohol level or breath-alcohol level of 0.20 or higher.

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

10 1.(a) Until the person is no longer under the
11 influence of alcoholic beverages, any chemical substance set
12 forth in s. 877.111, or any substance controlled under chapter
13 893 and affected to the extent that his or her normal
14 faculties are impaired;

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

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

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

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

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

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

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

31

1 The election to place a person in protective custody may be
2 done at the time of arrest but transfer of the person to a
3 facility shall not occur prior to the conclusion of the time
4 period set forth in paragraph (a) or the time that the person
5 is released on bail, whichever is later. The provisions of
6 this paragraph are in addition to, not in lieu of, the
7 provisions of subsection (5). A court shall order any person
8 placed in protective custody pursuant to this paragraph who is
9 subsequently convicted of a violation of this section to pay
10 the reasonable costs of evaluation and treatment.

11 Section 2. Section 316.1932, Florida Statutes, is
12 amended to read:

13 316.1932 Breath, blood, and urine tests for alcohol,
14 chemical substances, or controlled substances; implied
15 consent; refusal ~~right to refuse~~--

16 (1)(a) Any person who accepts the privilege extended
17 by the laws of this state of operating a motor vehicle within
18 this state is, by so operating such vehicle, deemed to have
19 given his or her consent to submit to an approved chemical
20 test or physical test including, but not limited to, an
21 infrared light test of his or her breath for the purpose of
22 determining the alcoholic content of his or her blood or
23 breath, and to a urine test for the purpose of detecting the
24 presence of chemical substances as set forth in s. 877.111 or
25 controlled substances, if the person is lawfully 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, chemical
29 substances, or controlled substances. The chemical or
30 physical breath test must be incidental to a lawful arrest and
31 administered at the request of a law enforcement officer who

1 has reasonable cause to believe such person was driving or was
2 in actual physical control of the motor vehicle within this
3 state while under the influence of alcoholic beverages. The
4 urine test must be incidental to a lawful arrest and
5 administered at a detention facility or any other facility,
6 mobile or otherwise, which is equipped to administer such
7 tests at the request of a law enforcement officer who has
8 reasonable cause to believe such person was driving or was in
9 actual physical control of a motor vehicle within this state
10 while under the influence of controlled substances. The urine
11 test shall be administered at a detention facility or any
12 other facility, mobile or otherwise, which is equipped to
13 administer such tests in a reasonable manner that will ensure
14 the accuracy of the specimen and maintain the privacy of the
15 individual involved. The administration of one type of test
16 does not preclude the administration of another type of test.
17 The person shall be told that his or her failure to submit to
18 any lawful test of his or her breath or urine, or both, is a
19 misdemeanor and, in addition, will result in the suspension of
20 the person's privilege to operate a motor vehicle for a period
21 of 1 year for a first refusal, or for a period of 18 months if
22 the driving privilege of such person has been previously
23 suspended as a result of a refusal to submit to such a test or
24 tests. The refusal to submit to a chemical or physical breath
25 test or to a urine test upon the request of a law enforcement
26 officer as provided in this section is admissible into
27 evidence in any criminal proceeding.

28 (b)1. The blood-alcohol level must be based upon grams
29 of alcohol per 100 milliliters of blood. The breath-alcohol
30 level must be based upon grams of alcohol per 210 liters of
31 breath.

1 2. An analysis of a person's breath, in order to be
2 considered valid under this section, must have been performed
3 substantially according to methods approved by the Department
4 of Law Enforcement. For this purpose, the department may
5 approve satisfactory techniques or methods. Any insubstantial
6 differences between approved techniques and actual testing
7 procedures in any individual case do not render the test or
8 test results invalid.

9 (c) Any person who accepts the privilege extended by
10 the laws of this state of operating a motor vehicle within
11 this state is, by operating such vehicle, deemed to have given
12 his or her consent to submit to an approved blood test for the
13 purpose of determining the alcoholic content of the blood or a
14 blood test for the purpose of determining the presence of
15 chemical substances or controlled substances as provided in
16 this section if there is reasonable cause to believe the
17 person was driving or in actual physical control of a motor
18 vehicle while under the influence of alcoholic beverages or
19 chemical or controlled substances and the person appears for
20 treatment at a hospital, clinic, or other medical facility and
21 the administration of a breath or urine test is impractical or
22 impossible. As used in this paragraph, the term "other medical
23 facility" includes an ambulance or other medical emergency
24 vehicle. The blood test shall be performed in a reasonable
25 manner. Any person who is incapable of refusal by reason of
26 unconsciousness or other mental or physical condition is
27 deemed not to have withdrawn his or her consent to such test.
28 A blood test may be administered whether or not the person is
29 told that his or her failure to submit to such a blood test is
30 a misdemeanor and, in addition, will result in the suspension
31 of the person's privilege to operate a motor vehicle upon the

1 public highways of this state. Any person who is capable of
2 refusal shall be told that his or her failure to submit to
3 such a blood test is a misdemeanor and, in addition, will
4 result in the suspension of the person's privilege to operate
5 a motor vehicle for a period of 1 year for a first refusal, or
6 for a period of 18 months if the driving privilege of the
7 person has been suspended previously as a result of a refusal
8 to submit to such a test or tests. The refusal to submit to a
9 blood test upon the request of a law enforcement officer is
10 admissible in evidence in any criminal proceeding.

11 (d) If the arresting officer does not request a
12 chemical or physical breath test of the person arrested for
13 any offense allegedly committed while the person was driving
14 or was in actual physical control of a motor vehicle while
15 under the influence of alcoholic beverages or controlled
16 substances, such person may request the arresting officer to
17 have a chemical or physical test made of the arrested person's
18 breath or a test of the urine or blood for the purpose of
19 determining the alcoholic content of the person's blood or
20 breath or the presence of chemical substances or controlled
21 substances; and, if so requested, the arresting officer shall
22 have the test performed.

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

27 2. A nonresident or any other person driving in a
28 status exempt from the requirements of the driver's license
29 law, by his or her act of driving in such exempt status, is
30 deemed to have expressed his or her consent to the provisions
31 of this section.

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

4 (f)1. The tests determining the weight of alcohol in
5 the defendant's blood or breath shall be administered at the
6 request of a law enforcement officer substantially in
7 accordance with rules of the Department of Law Enforcement.
8 Such rules must specify precisely the test or tests that are
9 approved by the Department of Law Enforcement for reliability
10 of result and ease of administration, and must provide an
11 approved method of administration which must be followed in
12 all such tests given under this section. However, the failure
13 of a law enforcement officer to request the withdrawal of
14 blood does not affect the admissibility of a test of blood
15 withdrawn for medical purposes.

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

27 b. Notwithstanding any provision of law pertaining to
28 the confidentiality of hospital records or other medical
29 records, if a health care provider, who is providing medical
30 care in a health care facility to a person injured in a motor
31 vehicle crash, becomes aware, as a result of any blood test

1 performed in the course of that medical treatment, that the
2 person's blood-alcohol level meets or exceeds the
3 blood-alcohol level specified in s. 316.193(1)(b), the health
4 care provider may notify any law enforcement officer or law
5 enforcement agency. Any such notice must be given within a
6 reasonable time after the health care provider receives the
7 test result. Any such notice shall be used only for the
8 purpose of providing the law enforcement officer with
9 reasonable cause to request the withdrawal of a blood sample
10 pursuant to this section.

11 c. The notice shall consist only of the name of the
12 person being treated, the name of the person who drew the
13 blood, the blood-alcohol level indicated by the test, and the
14 date and time of the administration of the test.

15 d. Nothing contained in s. 395.3025(4), s. 455.667, or
16 any applicable practice act affects the authority to provide
17 notice under this section, and the health care provider is not
18 considered to have breached any duty owed to the person under
19 s. 395.3025(4), s. 455.667, or any applicable practice act by
20 providing notice or failing to provide notice. It shall not be
21 a breach of any ethical, moral, or legal duty for a health
22 care provider to provide notice or fail to provide notice.

23 e. A civil, criminal, or administrative action may not
24 be brought against any person or health care provider
25 participating in good faith in the provision of notice or
26 failure to provide notice as provided in this section. Any
27 person or health care provider participating in the provision
28 of notice or failure to provide notice as provided in this
29 section shall be immune from any civil or criminal liability
30 and from any professional disciplinary action with respect to
31 the provision of notice or failure to provide notice under

1 this section. Any such participant has the same immunity with
2 respect to participating in any judicial proceedings resulting
3 from the notice or failure to provide notice.

4 3. The person tested may, at his or her own expense,
5 have a physician, registered nurse, other personnel authorized
6 by a hospital to draw blood, or duly licensed clinical
7 laboratory director, supervisor, technologist, or technician,
8 or other person of his or her own choosing administer an
9 independent test in addition to the test administered at the
10 direction of the law enforcement officer for the purpose of
11 determining the amount of alcohol in the person's blood or
12 breath or the presence of chemical substances or controlled
13 substances at the time alleged, as shown by chemical analysis
14 of his or her blood or urine, or by chemical or physical test
15 of his or her breath. The failure or inability to obtain an
16 independent test by a person does not preclude the
17 admissibility in evidence of the test taken at the direction
18 of the law enforcement officer. The law enforcement officer
19 shall not interfere with the person's opportunity to obtain
20 the independent test and shall provide the person with timely
21 telephone access to secure the test, but the burden is on the
22 person to arrange and secure the test at the person's own
23 expense.

24 4. Upon the request of the person tested, full
25 information concerning the test taken at the direction of the
26 law enforcement officer shall be made available to the person
27 or his or her attorney.

28 5. A hospital, clinical laboratory, medical clinic, or
29 similar medical institution or physician, certified paramedic,
30 registered nurse, licensed practical nurse, other personnel
31 authorized by a hospital to draw blood, or duly licensed

1 clinical laboratory director, supervisor, technologist, or
2 technician, or other person assisting a law enforcement
3 officer does not incur any civil or criminal liability as a
4 result of the withdrawal or analysis of a blood or urine
5 specimen, or the chemical or physical test of a person's
6 breath pursuant to accepted medical standards when requested
7 by a law enforcement officer, regardless of whether or not the
8 subject resisted administration of the test.

9 (2) The results of any test administered pursuant to
10 this section for the purpose of detecting the presence of any
11 controlled substance shall not be admissible as evidence in a
12 criminal prosecution for the possession of a controlled
13 substance.

14 (3) Notwithstanding any provision of law pertaining to
15 the confidentiality of hospital records or other medical
16 records, information relating to the alcoholic content of the
17 blood or breath or the presence of chemical substances or
18 controlled substances in the blood obtained pursuant to this
19 section shall be released to a court, prosecuting attorney,
20 defense attorney, or law enforcement officer in connection
21 with an alleged violation of s. 316.193 upon request for such
22 information.

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

25 316.1933 Blood test for impairment or intoxication in
26 cases of death or serious bodily injury; right to use
27 reasonable force.--

28 (1)(a) ~~Notwithstanding any recognized ability to~~
29 ~~refuse to submit to the tests provided in s. 316.1932 or any~~
30 ~~recognized power to revoke the implied consent to such tests,~~
31 If a law enforcement officer has probable cause to believe

1 that a motor vehicle ~~driven by or in the actual physical~~
2 ~~control of a person under the influence of alcoholic~~
3 ~~beverages, any chemical substances, or any controlled~~
4 ~~substances~~ has caused the death or serious bodily injury of a
5 human being, ~~such person shall submit, upon the request of a~~
6 law enforcement officer shall require any person driving or in
7 actual physical control of the motor vehicle or any motor
8 vehicle involved in the incident causing such death or injury
9 to submit to a test of the person's blood for the purpose of
10 determining the alcoholic content thereof or the presence of
11 chemical substances as set forth in s. 877.111 or any
12 substance controlled under chapter 893. The law enforcement
13 officer may use reasonable force if necessary to require such
14 person to submit to the administration of the blood test. The
15 blood test shall be performed in a reasonable manner.
16 Notwithstanding s. 316.1932, the testing required by this
17 paragraph need not be incidental to a lawful arrest of the
18 person.

19 (b) The term "serious bodily injury" means an injury
20 to any person, including the driver, which consists of a
21 physical condition that creates a substantial risk of death,
22 serious personal disfigurement, or protracted loss or
23 impairment of the function of any bodily member or organ.

24 (c) The law enforcement officer shall offer any person
25 subject to a blood test under this subsection the opportunity
26 to submit to an approved chemical test of the person's breath
27 and, if the person submits to the test and a valid reading is
28 obtained, the blood test shall be waived. This paragraph
29 shall not apply to any person who is unconscious or whose
30 mental or physical condition does not allow the administration
31 of a breath test or any person whom the law enforcement

1 officer has probable cause to believe was operating a motor
2 vehicle under the influence of any chemical substances as set
3 forth in s. 877.111 or any controlled substances.

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

6 316.1939 Refusal to submit to testing; penalties.--

7 (1) Any person who refuses to submit to a chemical
8 test of his or her breath, blood, or urine, as described in s.
9 316.1932, upon the request of a law enforcement officer who
10 has reasonable cause to believe such person was driving or was
11 in actual physical control of a motor vehicle while under the
12 influence of alcoholic beverages, chemical substances, or
13 controlled substances, commits a misdemeanor of the first
14 degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

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

23 327.35 Boating under the influence; penalties;
24 "designated drivers".--

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

28 1. By a fine of:

29 a. Not less than \$250 or more than \$500 for a first
30 conviction.

31

1 b. Not less than \$500 or more than \$1,000 for a second
2 conviction;
3 ~~c. Not less than \$1,000 or more than \$2,500 for a~~
4 ~~third conviction; and~~
5 2. By imprisonment for:
6 a. Not more than 6 months for a first conviction.
7 b. Not more than 9 months for a second conviction.
8 ~~c. Not more than 12 months for a third conviction.~~
9 (b) Any person who is convicted of a third ~~fourth~~ or
10 subsequent violation of this section is guilty of a felony of
11 the third degree, punishable as provided in s. 775.082, s.
12 775.083, or s. 775.084; however, the fine imposed for such
13 third ~~fourth~~ or subsequent violation may not be less than
14 \$1,000.
15 (3) Any person:
16 (a) Who is in violation of subsection (1);
17 (b) Who operates a vessel; and
18 (c) Who, by reason of such operation, causes or
19 contributes to the cause of:
20 1. Damage to the property or person of another commits
21 a misdemeanor of the first degree, punishable as provided in
22 s. 775.082 or s. 775.083.
23 2. Serious bodily injury to another, as defined in s.
24 327.353 ~~316.1933~~, commits a felony of the third degree,
25 punishable as provided in s. 775.082, s. 775.083, or s.
26 775.084.
27 3. The death of any human being commits BUI
28 manslaughter, and commits:
29 a. A felony of the second degree, punishable as
30 provided in s. 775.082, s. 775.083, or s. 775.084.
31

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

3 (I) At the time of the accident, the person knew, or
4 should have known, that the accident occurred; and

5 (II) The person failed to give information and render
6 aid as required by s. 327.30 ~~316.062~~.

7
8 This sub-subparagraph does not require that the person knew
9 that the accident resulted in injury or death.

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

16 (a) By a fine of:

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

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

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

23 (b) By imprisonment for:

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

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

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

27
28 For the purposes of this subsection, only the instant offense
29 is required to be a violation of subsection (1) by a person
30 who has a blood-alcohol level or breath-alcohol level of 0.20
31 or higher.

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

3 1.(a) Until the person is no longer under the
4 influence of alcoholic beverages, any chemical substance set
5 forth in s. 877.111, or any substance controlled under chapter
6 893 and affected to the extent that his or her normal
7 faculties are impaired;

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

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

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

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

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

19 3. The person, by reason of operation of a vessel, has
20 caused death or serious bodily injury as defined in s.
21 327.353; or

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

24
25 The election to place a person in protective custody may be
26 done at the time of arrest but transfer of the person to a
27 facility shall not occur prior to the conclusion of the time
28 period set forth in paragraph (a). The provisions of this
29 paragraph are in addition to, not in lieu of, the provisions
30 of subsection (5). A court shall order any person placed in
31 protective custody pursuant to this paragraph, who is

1 subsequently convicted of a violation of this section, to pay
2 the reasonable costs of evaluation and treatment.

3 Section 6. Section 327.352, Florida Statutes, is
4 amended to read:

5 327.352 Breath, blood, and urine tests for alcohol,
6 chemical substances, or controlled substances; implied
7 consent; refusal ~~right to refuse~~--

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

1 other facility, mobile or otherwise, which is equipped to
2 administer such tests at the request of a law enforcement
3 officer who has reasonable cause to believe such person was
4 operating a vessel within this state while under the influence
5 of controlled substances. The urine test shall be administered
6 at a detention facility or any other facility, mobile or
7 otherwise, which is equipped to administer such tests in a
8 reasonable manner that will ensure the accuracy of the
9 specimen and maintain the privacy of the individual involved.
10 The administration of one type of test does not preclude the
11 administration of another type of test. The person shall be
12 told that his or her failure to submit to any lawful test of
13 his or her breath or urine, or both, is a misdemeanor and, in
14 addition, will result in a civil penalty of \$500. The refusal
15 to submit to a chemical or physical breath or urine test upon
16 the request of a law enforcement officer as provided in this
17 section is admissible into evidence in any criminal
18 proceeding.

19 (b)1. The blood-alcohol level must be based upon grams
20 of alcohol per 100 milliliters of blood. The breath-alcohol
21 level must be based upon grams of alcohol per 210 liters of
22 breath.

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

31

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

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

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

5 (e)1. The tests determining the weight of alcohol in
6 the defendant's blood or breath shall be administered at the
7 request of a law enforcement officer substantially in
8 accordance with rules of the Department of Law Enforcement.
9 Such rules must specify precisely the test or tests that are
10 approved by the Department of Law Enforcement for reliability
11 of result and ease of administration, and must provide an
12 approved method of administration which must be followed in
13 all such tests given under this section. However, the failure
14 of a law enforcement officer to request the withdrawal of
15 blood does not affect the admissibility of a test of blood
16 withdrawn for medical purposes.

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

28 3. The person tested may, at his or her own expense,
29 have a physician, registered nurse, other personnel authorized
30 by a hospital to draw blood, or duly licensed clinical
31 laboratory director, supervisor, technologist, or technician,

1 or other person of his or her own choosing administer an
2 independent test in addition to the test administered at the
3 direction of the law enforcement officer for the purpose of
4 determining the amount of alcohol in the person's blood or
5 breath or the presence of chemical substances or controlled
6 substances at the time alleged, as shown by chemical analysis
7 of his or her blood or urine, or by chemical or physical test
8 of his or her breath. The failure or inability to obtain an
9 independent test by a person does not preclude the
10 admissibility in evidence of the test taken at the direction
11 of the law enforcement officer. The law enforcement officer
12 shall not interfere with the person's opportunity to obtain
13 the independent test and shall provide the person with timely
14 telephone access to secure the test, but the burden is on the
15 person to arrange and secure the test at the person's own
16 expense.

17 4. Upon the request of the person tested, full
18 information concerning the test taken at the direction of the
19 law enforcement officer shall be made available to the person
20 or his or her attorney.

21 5. A hospital, clinical laboratory, medical clinic, or
22 similar medical institution or physician, certified paramedic,
23 registered nurse, licensed practical nurse, other personnel
24 authorized by a hospital to draw blood, or duly licensed
25 clinical laboratory director, supervisor, technologist, or
26 technician, or other person assisting a law enforcement
27 officer does not incur any civil or criminal liability as a
28 result of the withdrawal or analysis of a blood or urine
29 specimen, or the chemical or physical test of a person's
30 breath pursuant to accepted medical standards when requested
31

1 by a law enforcement officer, regardless of whether or not the
2 subject resisted administration of the test.

3 (2) The results of any test administered pursuant to
4 this section for the purpose of detecting the presence of any
5 controlled substance shall not be admissible as evidence in a
6 criminal prosecution for the possession of a controlled
7 substance.

8 (3) Notwithstanding any provision of law pertaining to
9 the confidentiality of hospital records or other medical
10 records, information relating to the alcoholic content of the
11 blood or breath or the presence of chemical substances or
12 controlled substances in the blood obtained pursuant to this
13 section shall be released to a court, prosecuting attorney,
14 defense attorney, or law enforcement officer in connection
15 with an alleged violation of s. 327.35 upon request for such
16 information.

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

19 327.353 Blood test for impairment or intoxication in
20 cases of death or serious bodily injury; right to use
21 reasonable force.--

22 ~~(1)(a) Notwithstanding any recognized ability to~~
23 ~~refuse to submit to the tests provided in s. 327.352 or any~~
24 ~~recognized power to revoke the implied consent to such tests,~~
25 If a law enforcement officer has probable cause to believe
26 that a vessel ~~operated by a person under the influence of~~
27 ~~alcoholic beverages, any chemical substances, or any~~
28 ~~controlled substances~~ has caused the death or serious bodily
29 injury of a human being, ~~the person shall submit, upon the~~
30 ~~request of a law enforcement officer~~ shall require any person
31 operating or in actual physical control of such vessel or any

1 vessel involved in the incident causing such death or injury
2 to submit,to a test of the person's blood for the purpose of
3 determining the alcoholic content thereof or the presence of
4 chemical substances as set forth in s. 877.111 or any
5 substance controlled under chapter 893. The law enforcement
6 officer may use reasonable force if necessary to require the
7 person to submit to the administration of the blood test. The
8 blood test shall be performed in a reasonable manner.
9 Notwithstanding s. 327.352, the testing required by this
10 paragraph need not be incidental to a lawful arrest of the
11 person.

12 (b) The term "serious bodily injury" means an injury
13 to any person, including the operator, which consists of a
14 physical condition that creates a substantial risk of death,
15 serious personal disfigurement, or protracted loss or
16 impairment of the function of any bodily member or organ.

17 (c) The law enforcement officer shall offer any person
18 subject to a blood test under this subsection the opportunity
19 to submit to an approved chemical test of the person's breath
20 and, if the person submits to the test and a valid reading is
21 obtained, the blood test shall be waived. This paragraph shall
22 not apply to any person who is unconscious or whose mental or
23 physical condition does not allow the administration of a
24 breath test or any person whom the law enforcement officer has
25 probable cause to believe was operating a vessel under the
26 influence of any chemical substances as set forth in s.
27 877.111 or any controlled substances.

28 Section 8. Section 327.359, Florida Statutes, is
29 created to read:

30 327.359 Refusal to submit to testing; penalties.--
31

1 (1) Any person who refuses to submit to a chemical
2 test of his or her breath, blood, or urine, as described in s.
3 327.352, upon the request of a law enforcement officer who has
4 reasonable cause to believe such person was driving or was in
5 actual physical control of a vessel while under the influence
6 of alcoholic beverages, chemical substances, or controlled
7 substances, commits a misdemeanor of the first degree,
8 punishable as provided in s. 775.082 or s. 775.083.

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

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

15 Section 9. Section 397.6755, Florida Statutes, is
16 created to read:

17 397.6755 Evidence of criteria for involuntary
18 admissions and involuntary treatment; funding.--

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

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

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

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

4 (d) The person is on pretrial release for a previous
5 offense under s. 316.193 or s. 327.35.

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

18 Section 10. Paragraphs (f) and (i) of subsection (3)
19 of section 921.0022, Florida Statutes, are amended to read:
20 921.0022 Criminal Punishment Code; offense severity
21 ranking chart.--

22 (3) OFFENSE SEVERITY RANKING CHART

23

24 Florida	Felony	
25 Statute	Degree	Description
26		
27		
28		(f) LEVEL 6
29 316.027(1)(b)	2nd	Accident involving death, failure
30		to stop; leaving scene.
31		

1	316.193(2)(b)	3rd	Felony DUI, <u>3rd</u> 4th or subsequent
2			conviction.
3	<u>327.35(2)(b)</u>	<u>3rd</u>	<u>Felony BUI, 3rd or subsequent</u>
4			<u>conviction.</u>
5	775.0875(1)	3rd	Taking firearm from law
6			enforcement officer.
7	775.21(10)	3rd	Sexual predators; failure to
8			register; failure to renew
9			driver's license or
10			identification card.
11	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
12			without intent to kill.
13	784.021(1)(b)	3rd	Aggravated assault; intent to
14			commit felony.
15	784.041	3rd	Felony battery.
16	784.048(3)	3rd	Aggravated stalking; credible
17			threat.
18	784.048(5)	3rd	Aggravated stalking of person
19			under 16.
20	784.07(2)(c)	2nd	Aggravated assault on law
21			enforcement officer.
22	784.08(2)(b)	2nd	Aggravated assault on a person 65
23			years of age or older.
24	784.081(2)	2nd	Aggravated assault on specified
25			official or employee.
26	784.082(2)	2nd	Aggravated assault by detained
27			person on visitor or other
28			detainee.
29	784.083(2)	2nd	Aggravated assault on code
30			inspector.
31			

1	787.02(2)	3rd	False imprisonment; restraining
2			with purpose other than those in
3			s. 787.01.
4	790.115(2)(d)	2nd	Discharging firearm or weapon on
5			school property.
6	790.161(2)	2nd	Make, possess, or throw
7			destructive device with intent to
8			do bodily harm or damage
9			property.
10	790.164(1)	2nd	False report of deadly explosive
11			or act of arson or violence to
12			state property.
13	790.19	2nd	Shooting or throwing deadly
14			missiles into dwellings, vessels,
15			or vehicles.
16	794.011(8)(a)	3rd	Solicitation of minor to
17			participate in sexual activity by
18			custodial adult.
19	794.05(1)	2nd	Unlawful sexual activity with
20			specified minor.
21	800.04(5)(d)	3rd	Lewd or lascivious molestation;
22			victim 12 years of age or older
23			but less than 16 years; offender
24			less than 18 years.
25	800.04(6)(b)	2nd	Lewd or lascivious conduct;
26			offender 18 years of age or
27			older.
28	806.031(2)	2nd	Arson resulting in great bodily
29			harm to firefighter or any other
30			person.
31			

1	810.02(3)(c)	2nd	Burglary of occupied structure;
2			unarmed; no assault or battery.
3	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
4			but less than \$100,000, grand
5			theft in 2nd degree.
6	812.13(2)(c)	2nd	Robbery, no firearm or other
7			weapon (strong-arm robbery).
8	817.034(4)(a)1.	1st	Communications fraud, value
9			greater than \$50,000.
10	817.4821(5)	2nd	Possess cloning paraphernalia
11			with intent to create cloned
12			cellular telephones.
13	825.102(1)	3rd	Abuse of an elderly person or
14			disabled adult.
15	825.102(3)(c)	3rd	Neglect of an elderly person or
16			disabled adult.
17	825.1025(3)	3rd	Lewd or lascivious molestation of
18			an elderly person or disabled
19			adult.
20	825.103(2)(c)	3rd	Exploiting an elderly person or
21			disabled adult and property is
22			valued at less than \$20,000.
23	827.03(1)	3rd	Abuse of a child.
24	827.03(3)(c)	3rd	Neglect of a child.
25	827.071(2)&(3)	2nd	Use or induce a child in a sexual
26			performance, or promote or direct
27			such performance.
28	836.05	2nd	Threats; extortion.
29	836.10	2nd	Written threats to kill or do
30			bodily injury.
31	843.12	3rd	Aids or assists person to escape.

1	847.0135(3)	3rd	Solicitation of a child, via a
2			computer service, to commit an
3			unlawful sex act.
4	914.23	2nd	Retaliation against a witness,
5			victim, or informant, with bodily
6			injury.
7	943.0435(9)	3rd	Sex offenders; failure to comply
8			with reporting requirements.
9	944.35(3)(a)2.	3rd	Committing malicious battery upon
10			or inflicting cruel or inhuman
11			treatment on an inmate or
12			offender on community
13			supervision, resulting in great
14			bodily harm.
15	944.40	2nd	Escapes.
16	944.46	3rd	Harboring, concealing, aiding
17			escaped prisoners.
18	944.47(1)(a)5.	2nd	Introduction of contraband
19			(firearm, weapon, or explosive)
20			into correctional facility.
21	951.22(1)	3rd	Intoxicating drug, firearm, or
22			weapon introduced into county
23			facility.
24			(i) LEVEL 9
25	316.193		
26	(3)(c)3.b.	1st	DUI manslaughter; failing to
27			render aid or give information.
28	<u>327.35(3)(c)3.b.</u>	<u>1st</u>	<u>BUI manslaughter; failing to</u>
29			<u>render aid or give information.</u>
30	782.04(1)	1st	Attempt, conspire, or solicit to
31			commit premeditated murder.

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

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

1 893.135
2 (1)(b)1.c. 1st Trafficking in cocaine, more than
3 400 grams, less than 150
4 kilograms.
5 893.135
6 (1)(c)1.c. 1st Trafficking in illegal drugs,
7 more than 28 grams, less than 30
8 kilograms.
9 893.135
10 (1)(d)1.c. 1st Trafficking in phencyclidine,
11 more than 400 grams.
12 893.135
13 (1)(e)1.c. 1st Trafficking in methaqualone, more
14 than 25 kilograms.
15 893.135
16 (1)(f)1.c. 1st Trafficking in amphetamine, more
17 than 200 grams.
18 Section 11. Section 938.07, Florida Statutes, is
19 amended to read:
20 938.07 Driving or boating under the
21 influence.--Notwithstanding any other provision of s. 316.193
22 or s. 327.35, a court cost of \$135 shall be added to any fine
23 imposed pursuant to s. 316.193 or s. 327.35, of which \$25
24 shall be deposited in the Emergency Medical Services Trust
25 Fund, \$50 shall be deposited in the Criminal Justice Standards
26 and Training Trust Fund of the Department of Law Enforcement
27 to be used for operational expenses in conducting the
28 statewide criminal analysis laboratory system established in
29 s. 943.32, and \$60 shall be deposited in the Brain and Spinal
30 Cord Injury Rehabilitation Trust Fund created in s. 381.79
31 ~~413.613~~.

1 Section 12. There is hereby appropriated from the
2 General Revenue Fund to the Florida Department of Law
3 Enforcement the sum of \$3,500,000 for the purchase of
4 breath-testing equipment to be provided to state and local law
5 enforcement agencies.

6 Section 13. This act shall take effect January 1,
7 2001.

8
9 *****

10 LEGISLATIVE SUMMARY

11 Revises provisions relating to driving or boating under
12 the influence of alcohol or controlled substances to:
13 reduce the number of convictions required for a felony
14 DUI or BUI; revise conditions for conviction in cases of
15 accident, serious bodily injury, or death; allow law
16 enforcement officers to place a person in protective
17 custody and require a person placed in protective custody
18 to reimburse the provider of services if the person is
19 convicted; remove the right to refuse a breath, urine, or
20 blood test and require law enforcement officers to inform
21 people that refusal to submit to such a test is a
22 misdemeanor; require people to submit to a blood test
23 under specified circumstances, provide that the test need
24 not be incidental to a lawful arrest, and provide that a
25 breath alcohol test may substitute for a blood alcohol
26 test; provide a penalty for refusing to submit to a
27 chemical test of breath, urine, or blood; state
28 conditions under which a court may find that a person has
29 lost the power of self-control with respect to substance
30 use and is likely to inflict physical harm on himself or
31 herself or another, place such person in protective
 custody, require payment for care of such a person from a
 specific fund, and require such person placed in
 protective custody to reimburse the fund if the person is
 convicted; revise the felony offense severity ranking
 chart to include felony BUI and BUI manslaughter; and
 provide for application of a fee to persons found guilty
 of boating under the influence. (See bill for details.)