

By the Committee on Criminal Justice and Senator Diaz-Balart

307-2114-00

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 correcting 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; correcting a
30 cross-reference; providing an effective date.
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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:

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- 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.~~

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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.

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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 the person driving or in
7 actual physical control of the motor vehicle to submit,to a
8 test of the person's blood for the purpose of determining the
9 alcoholic content thereof or the presence of chemical
10 substances as set forth in s. 877.111 or any substance
11 controlled under chapter 893. The law enforcement officer may
12 use reasonable force if necessary to require such person to
13 submit to the administration of the blood test. The blood
14 test shall be performed in a reasonable manner.

15 Notwithstanding s. 316.1932, the testing required by this
16 paragraph need not be incidental to a lawful arrest of the
17 person.

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

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

1 vehicle under the influence of any chemical substances as set
2 forth in s. 877.111 or any controlled substances.

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

5 316.1939 Refusal to submit to testing; penalties.--

6 (1) Any person who refuses to submit to a chemical or
7 physical test of his or her breath, blood, or urine, as
8 described in s. 316.1932, and:

9 (a) Whom the arresting law enforcement officer had
10 probable cause to believe was driving or in actual physical
11 control of a motor vehicle in this state while under the
12 influence of alcoholic beverages or controlled substances;

13 (b) Who was placed under lawful arrest for a violation
14 of s. 316.193, unless such test was requested pursuant to s.
15 316.1932(1)(c);

16 (c) Who was informed that if he or she refused to
17 submit to such test his or her privilege to operate a motor
18 vehicle would be suspended for a period of 1 year or, in the
19 case of a second or subsequent refusal, for a period of 18
20 months, and that the refusal to submit to such test is a
21 misdemeanor; and

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

25
26 commits a misdemeanor of the first degree and is subject to
27 punishment as provided in s. 775.082 or s. 775.083.

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

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

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

6 327.35 Boating under the influence; penalties;
7 "designated drivers".--

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

11 1. By a fine of:

12 a. Not less than \$250 or more than \$500 for a first
13 conviction.

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

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

18 2. By imprisonment for:

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

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

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

22 (b) Any person who is convicted of a third ~~fourth~~ or
23 subsequent violation of this section is guilty of a felony of
24 the third degree, punishable as provided in s. 775.082, s.
25 775.083, or s. 775.084; however, the fine imposed for such
26 third ~~fourth~~ or subsequent violation may not be less than
27 \$1,000.

28 (3) Any person:

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

30 (b) Who operates a vessel; and
31

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

3 1. Damage to the property or person of another commits
4 a misdemeanor of the first degree, punishable as provided in
5 s. 775.082 or s. 775.083.

6 2. Serious bodily injury to another, as defined in s.
7 327.353 ~~316.1933~~, commits a felony of the third degree,
8 punishable as provided in s. 775.082, s. 775.083, or s.
9 775.084.

10 3. The death of any human being commits BUI
11 manslaughter, and commits:

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

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

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

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

20
21 This sub-subparagraph does not require that the person knew
22 that the accident resulted in injury or death.

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

29 (a) By a fine of:

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

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

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

5 (b) By imprisonment for:

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

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

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

9
10 For the purposes of this subsection, only the instant offense
11 is required to be a violation of subsection (1) by a person
12 who has a blood-alcohol level or breath-alcohol level of 0.20
13 or higher.

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

16 1.(a) Until the person is no longer under the
17 influence of alcoholic beverages, any chemical substance set
18 forth in s. 877.111, or any substance controlled under chapter
19 893 and affected to the extent that his or her normal
20 faculties are impaired;

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

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

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

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

29 2. 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 3. The person, by reason of operation of a vessel, has
2 caused death or serious bodily injury as defined in s.
3 327.353; or

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

6
7 The election to place a person in protective custody may be
8 done at the time of arrest but transfer of the person to a
9 facility shall not occur prior to the conclusion of the time
10 period set forth in paragraph (a). The provisions of this
11 paragraph are in addition to, not in lieu of, the provisions
12 of subsection (5). A court shall order any person placed in
13 protective custody pursuant to this paragraph, who is
14 subsequently convicted of a violation of this section, to pay
15 the reasonable costs of evaluation and treatment.

16 Section 6. Section 327.352, Florida Statutes, is
17 amended to read:

18 327.352 Breath, blood, and urine tests for alcohol,
19 chemical substances, or controlled substances; implied
20 consent; ~~refusal right to refuse.--~~

21 (1)(a) The Legislature declares that the operation of
22 a vessel is a privilege that must be exercised in a reasonable
23 manner. In order to protect the public health and safety, it
24 is essential that a lawful and effective means of reducing the
25 incidence of boating while impaired or intoxicated be
26 established. Therefore, any person who accepts the privilege
27 extended by the laws of this state of operating a vessel
28 within this state is, by so operating such vessel, deemed to
29 have given his or her consent to submit to an approved
30 chemical test or physical test including, but not limited to,
31 an infrared light test of his or her breath for the purpose of

1 determining the alcoholic content of his or her blood or
2 breath, and to a urine test for the purpose of detecting the
3 presence of chemical substances as set forth in s. 877.111 or
4 controlled substances, if the person is lawfully arrested for
5 any offense allegedly committed while the person was operating
6 a vessel while under the influence of alcoholic beverages,
7 chemical substances, or controlled substances. The chemical
8 or physical breath test must be incidental to a lawful arrest
9 and administered at the request of a law enforcement officer
10 who has reasonable cause to believe such person was operating
11 the vessel within this state while under the influence of
12 alcoholic beverages. The urine test must be incidental to a
13 lawful arrest and administered at a detention facility or any
14 other facility, mobile or otherwise, which is equipped to
15 administer such tests at the request of a law enforcement
16 officer who has reasonable cause to believe such person was
17 operating a vessel within this state while under the influence
18 of controlled substances. The urine test shall be administered
19 at a detention facility or any other facility, mobile or
20 otherwise, which is equipped to administer such tests in a
21 reasonable manner that will ensure the accuracy of the
22 specimen and maintain the privacy of the individual involved.
23 The administration of one type of test does not preclude the
24 administration of another type of test. The person shall be
25 told that his or her failure to submit to any lawful test of
26 his or her breath or urine, or both, is a misdemeanor and, in
27 addition, will result in a civil penalty of \$500. The refusal
28 to submit to a chemical or physical breath or urine test upon
29 the request of a law enforcement officer as provided in this
30 section is admissible into evidence in any criminal
31 proceeding.

1 (b)1. The blood-alcohol level must be based upon grams
2 of alcohol per 100 milliliters of blood. The breath-alcohol
3 level must be based upon grams of alcohol per 210 liters of
4 breath.

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

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

1 shall be told that his or her failure to submit to such a
2 blood test is a misdemeanor and, in addition, will result in a
3 civil penalty of \$500. The refusal to submit to a blood test
4 upon the request of a law enforcement officer shall be
5 admissible in evidence in any criminal proceeding.

6 (d) If the arresting officer does not request a
7 chemical or physical breath test of the person arrested for
8 any offense allegedly committed while the person was operating
9 a vessel while under the influence of alcoholic beverages or
10 controlled substances, the person may request the arresting
11 officer to have a chemical or physical test made of the
12 arrested person's breath or a test of the urine or blood for
13 the purpose of determining the alcoholic content of the
14 person's blood or breath or the presence of chemical
15 substances or controlled substances; and, if so requested, the
16 arresting officer shall have the test performed.

17 (e)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. 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

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

29 4. Upon the request of the person tested, full
30 information concerning the test taken at the direction of the
31

1 law enforcement officer shall be made available to the person
2 or his or her attorney.

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

15 (2) The results of any test administered pursuant to
16 this section for the purpose of detecting the presence of any
17 controlled substance shall not be admissible as evidence in a
18 criminal prosecution for the possession of a controlled
19 substance.

20 (3) Notwithstanding any provision of law pertaining to
21 the confidentiality of hospital records or other medical
22 records, information relating to the alcoholic content of the
23 blood or breath or the presence of chemical substances or
24 controlled substances in the blood obtained pursuant to this
25 section shall be released to a court, prosecuting attorney,
26 defense attorney, or law enforcement officer in connection
27 with an alleged violation of s. 327.35 upon request for such
28 information.

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

31

1 327.353 Blood test for impairment or intoxication in
2 cases of death or serious bodily injury; right to use
3 reasonable force.--

4 (1)(a) ~~Notwithstanding any recognized ability to~~
5 ~~refuse to submit to the tests provided in s. 327.352 or any~~
6 ~~recognized power to revoke the implied consent to such tests,~~
7 If a law enforcement officer has probable cause to believe
8 that a vessel operated by a person under the influence of
9 alcoholic beverages, any chemical substances, or any
10 controlled substances has caused the death or serious bodily
11 injury of a human being, ~~the person shall submit, upon the~~
12 ~~request of a law enforcement officer~~ shall require the person
13 operating or in actual physical control of the vessel to
14 submit, to a test of the person's blood for the purpose of
15 determining the alcoholic content thereof or the presence of
16 chemical substances as set forth in s. 877.111 or any
17 substance controlled under chapter 893. The law enforcement
18 officer may use reasonable force if necessary to require the
19 person to submit to the administration of the blood test. The
20 blood test shall be performed in a reasonable manner.
21 Notwithstanding s. 327.352, the testing required by this
22 paragraph need not be incidental to a lawful arrest of the
23 person.

24 (b) The term "serious bodily injury" means an injury
25 to any person, including the operator, which consists of a
26 physical condition that creates a substantial risk of death,
27 serious personal disfigurement, or protracted loss or
28 impairment of the function of any bodily member or organ.

29 (c) The law enforcement officer shall offer any person
30 subject to a blood test under this subsection the opportunity
31 to submit to an approved chemical test of the person's breath

1 and, if the person submits to the test and a valid reading is
2 obtained, the blood test shall be waived. This paragraph shall
3 not apply to any person who is unconscious or whose mental or
4 physical condition does not allow the administration of a
5 breath test or any person whom the law enforcement officer has
6 probable cause to believe was operating a vessel under the
7 influence of any chemical substances as set forth in s.
8 877.111 or any controlled substances.

9 Section 8. Section 327.359, Florida Statutes, is
10 created to read:

11 327.359 Refusal to submit to testing; penalties.--

12 (1) Any person who refuses to submit to a chemical
13 test of his or her breath, blood, or urine, as described in s.
14 327.352, upon the request of a law enforcement officer who has
15 reasonable cause to believe such person was driving or was in
16 actual physical control of a vessel while under the influence
17 of alcoholic beverages, chemical substances, or controlled
18 substances, commits a misdemeanor of the first degree,
19 punishable as provided in s. 775.082 or s. 775.083.

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

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

26 Section 9. Section 397.6755, Florida Statutes, is
27 created to read:

28 397.6755 Evidence of criteria for involuntary
29 admissions and involuntary treatment; funding.--

30 (1) In addition to any other ground that may give rise
31 to a finding that a person has lost the power of self-control

1 with respect to substance use and is likely to inflict
2 physical harm on himself or herself or another, a court may
3 find that a person has lost the power of self-control with
4 respect to substance use and is likely to inflict physical
5 harm on himself or herself or another if the person has been
6 arrested for a violation of s. 316.193 or s. 327.35, and:

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

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

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

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

17 (2) Any person who meets the criteria for involuntary
18 admission pursuant to s. 397.675, who was placed in protective
19 custody pursuant to s. 316.193(9)(b) or s. 327.35(8)(b), and
20 who is a qualified resident as defined in s. 212.055(4)(d)
21 shall have the costs of evaluation and treatment paid from the
22 fund established pursuant to s. 212.055(4)(e). A court shall
23 order any person whose care is paid for under this subsection,
24 who is subsequently convicted of a violation of s. 316.193 or
25 s. 327.35, to reimburse the provider of the services for the
26 reasonable cost of the services provided and, if the person is
27 unable to reimburse the provider, a civil judgment in favor of
28 such fund shall be entered.

29 Section 10. Paragraphs (f) and (i) of subsection (3)
30 of section 921.0022, Florida Statutes, are amended to read:

31

1 921.0022 Criminal Punishment Code; offense severity
2 ranking chart.--
3 (3) OFFENSE SEVERITY RANKING CHART
4
5 Florida Felony
6 Statute Degree Description
7
8
9 (f) LEVEL 6
10 316.027(1)(b) 2nd Accident involving death, failure
11 to stop; leaving scene.
12 316.193(2)(b) 3rd Felony DUI, 3rd ~~4th~~ or subsequent
13 conviction.
14 327.35(2)(b) 3rd Felony BUI, 3rd or subsequent
15 conviction.
16 775.0875(1) 3rd Taking firearm from law
17 enforcement officer.
18 775.21(10) 3rd Sexual predators; failure to
19 register; failure to renew
20 driver's license or
21 identification card.
22 784.021(1)(a) 3rd Aggravated assault; deadly weapon
23 without intent to kill.
24 784.021(1)(b) 3rd Aggravated assault; intent to
25 commit felony.
26 784.041 3rd Felony battery.
27 784.048(3) 3rd Aggravated stalking; credible
28 threat.
29 784.048(5) 3rd Aggravated stalking of person
30 under 16.
31

1	784.07(2)(c)	2nd	Aggravated assault on law
2			enforcement officer.
3	784.08(2)(b)	2nd	Aggravated assault on a person 65
4			years of age or older.
5	784.081(2)	2nd	Aggravated assault on specified
6			official or employee.
7	784.082(2)	2nd	Aggravated assault by detained
8			person on visitor or other
9			detainee.
10	784.083(2)	2nd	Aggravated assault on code
11			inspector.
12	787.02(2)	3rd	False imprisonment; restraining
13			with purpose other than those in
14			s. 787.01.
15	790.115(2)(d)	2nd	Discharging firearm or weapon on
16			school property.
17	790.161(2)	2nd	Make, possess, or throw
18			destructive device with intent to
19			do bodily harm or damage
20			property.
21	790.164(1)	2nd	False report of deadly explosive
22			or act of arson or violence to
23			state property.
24	790.19	2nd	Shooting or throwing deadly
25			missiles into dwellings, vessels,
26			or vehicles.
27	794.011(8)(a)	3rd	Solicitation of minor to
28			participate in sexual activity by
29			custodial adult.
30	794.05(1)	2nd	Unlawful sexual activity with
31			specified minor.

1	800.04(5)(d)	3rd	Lewd or lascivious molestation;
2			victim 12 years of age or older
3			but less than 16 years; offender
4			less than 18 years.
5	800.04(6)(b)	2nd	Lewd or lascivious conduct;
6			offender 18 years of age or
7			older.
8	806.031(2)	2nd	Arson resulting in great bodily
9			harm to firefighter or any other
10			person.
11	810.02(3)(c)	2nd	Burglary of occupied structure;
12			unarmed; no assault or battery.
13	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
14			but less than \$100,000, grand
15			theft in 2nd degree.
16	812.13(2)(c)	2nd	Robbery, no firearm or other
17			weapon (strong-arm robbery).
18	817.034(4)(a)1.	1st	Communications fraud, value
19			greater than \$50,000.
20	817.4821(5)	2nd	Possess cloning paraphernalia
21			with intent to create cloned
22			cellular telephones.
23	825.102(1)	3rd	Abuse of an elderly person or
24			disabled adult.
25	825.102(3)(c)	3rd	Neglect of an elderly person or
26			disabled adult.
27	825.1025(3)	3rd	Lewd or lascivious molestation of
28			an elderly person or disabled
29			adult.
30			
31			

1	825.103(2)(c)	3rd	Exploiting an elderly person or
2			disabled adult and property is
3			valued at less than \$20,000.
4	827.03(1)	3rd	Abuse of a child.
5	827.03(3)(c)	3rd	Neglect of a child.
6	827.071(2)&(3)	2nd	Use or induce a child in a sexual
7			performance, or promote or direct
8			such performance.
9	836.05	2nd	Threats; extortion.
10	836.10	2nd	Written threats to kill or do
11			bodily injury.
12	843.12	3rd	Aids or assists person to escape.
13	847.0135(3)	3rd	Solicitation of a child, via a
14			computer service, to commit an
15			unlawful sex act.
16	914.23	2nd	Retaliation against a witness,
17			victim, or informant, with bodily
18			injury.
19	943.0435(9)	3rd	Sex offenders; failure to comply
20			with reporting requirements.
21	944.35(3)(a)2.	3rd	Committing malicious battery upon
22			or inflicting cruel or inhuman
23			treatment on an inmate or
24			offender on community
25			supervision, resulting in great
26			bodily harm.
27	944.40	2nd	Escapes.
28	944.46	3rd	Harboring, concealing, aiding
29			escaped prisoners.
30			
31			

1	944.47(1)(a)5.	2nd	Introduction of contraband
2			(firearm, weapon, or explosive)
3			into correctional facility.
4	951.22(1)	3rd	Intoxicating drug, firearm, or
5			weapon introduced into county
6			facility.
7			(i) LEVEL 9
8	316.193		
9	(3)(c)3.b.	1st	DUI manslaughter; failing to
10			render aid or give information.
11	<u>327.35(3)(c)3.b.</u>	<u>1st</u>	<u>BUI manslaughter; failing to</u>
12			<u>render aid or give information.</u>
13	782.04(1)	1st	Attempt, conspire, or solicit to
14			commit premeditated murder.
15	782.04(3)	1st,PBL	Accomplice to murder in
16			connection with arson, sexual
17			battery, robbery, burglary, and
18			other specified felonies.
19	782.051(1)	1st	Attempted felony murder while
20			perpetrating or attempting to
21			perpetrate a felony enumerated in
22			s. 782.04(3).
23	782.07(2)	1st	Aggravated manslaughter of an
24			elderly person or disabled adult.
25	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
26			reward or as a shield or hostage.
27	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
28			or facilitate commission of any
29			felony.
30			
31			

1	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
2			interfere with performance of any
3			governmental or political
4			function.
5	787.02(3)(a)	1st	False imprisonment; child under
6			age 13; perpetrator also commits
7			aggravated child abuse, sexual
8			battery, or lewd or lascivious
9			battery, molestation, conduct, or
10			exhibition.
11	790.161	1st	Attempted capital destructive
12			device offense.
13	794.011(2)	1st	Attempted sexual battery; victim
14			less than 12 years of age.
15	794.011(2)	Life	Sexual battery; offender younger
16			than 18 years and commits sexual
17			battery on a person less than 12
18			years.
19	794.011(4)	1st	Sexual battery; victim 12 years
20			or older, certain circumstances.
21	794.011(8)(b)	1st	Sexual battery; engage in sexual
22			conduct with minor 12 to 18 years
23			by person in familial or
24			custodial authority.
25	800.04(5)(b)	1st	Lewd or lascivious molestation;
26			victim less than 12 years;
27			offender 18 years or older.
28	812.13(2)(a)	1st,PBL	Robbery with firearm or other
29			deadly weapon.
30	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
31			deadly weapon.

1	827.03(2)	1st	Aggravated child abuse.
2	847.0145(1)	1st	Selling, or otherwise
3			transferring custody or control,
4			of a minor.
5	847.0145(2)	1st	Purchasing, or otherwise
6			obtaining custody or control, of
7			a minor.
8	859.01	1st	Poisoning food, drink, medicine,
9			or water with intent to kill or
10			injure another person.
11	893.135	1st	Attempted capital trafficking
12			offense.
13	893.135(1)(a)3.	1st	Trafficking in cannabis, more
14			than 10,000 lbs.
15	893.135		
16	(1)(b)1.c.	1st	Trafficking in cocaine, more than
17			400 grams, less than 150
18			kilograms.
19	893.135		
20	(1)(c)1.c.	1st	Trafficking in illegal drugs,
21			more than 28 grams, less than 30
22			kilograms.
23	893.135		
24	(1)(d)1.c.	1st	Trafficking in phencyclidine,
25			more than 400 grams.
26	893.135		
27	(1)(e)1.c.	1st	Trafficking in methaqualone, more
28			than 25 kilograms.
29	893.135		
30	(1)(f)1.c.	1st	Trafficking in amphetamine, more
31			than 200 grams.

1 Section 11. Section 938.07, Florida Statutes, is
2 amended to read:

3 938.07 Driving or boating under the
4 influence.--Notwithstanding any other provision of s. 316.193
5 or s. 327.35, a court cost of \$135 shall be added to any fine
6 imposed pursuant to s. 316.193 or s. 327.35, of which \$25
7 shall be deposited in the Emergency Medical Services Trust
8 Fund, \$50 shall be deposited in the Criminal Justice Standards
9 and Training Trust Fund of the Department of Law Enforcement
10 to be used for operational expenses in conducting the
11 statewide criminal analysis laboratory system established in
12 s. 943.32, and \$60 shall be deposited in the Brain and Spinal
13 Cord Injury Rehabilitation Trust Fund created in s. 381.79
14 ~~413.613~~.

15 Section 12. This act shall take effect January 1,
16 2001.

17
18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 Senate Bill 1506

- 21 - Deletes appropriation to FDLE.
22 - Requires probable cause to believe the driver is under
23 the influence before a law enforcement officer can order
24 mandatory blood tests.
25 - Prescribes the steps that a law enforcement officer must
26 take before being able to charge the newly created
27 misdemeanor.
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