

Amendment No. 01a (for drafter's use only)

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

11 Representative(s) Byrd offered the following:

13 **Amendment to Amendment (395249) (with title amendment)**

14 On page 191, lines 6 & 7,
15 remove from the amendment:
16 all of said lines

18 and insert:

19 Section 159. Subsections (2), (3), (4), (6), and (9)
20 of section 316.193, Florida Statutes, are amended to read:

21 316.193 Driving under the influence; penalties.--

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

25 1. By a fine of:

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

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

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

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

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1 (4) Any person who is convicted of a violation of
2 subsection (1) and who has a blood-alcohol level or
3 breath-alcohol level of 0.16 ~~0.20~~ or higher, or any person who
4 is convicted of a violation of subsection (1) and who at the
5 time of the offense was accompanied in the vehicle by a person
6 under the age of 18 years, shall be punished:

7 (a) By a fine of:

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

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

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

14 (b) By imprisonment for:

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

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

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

18
19 For the purposes of this subsection, ~~any conviction for a~~
20 ~~violation of s. 327.35,~~ only the instant offense is required
21 to be a violation of subsection (1) by a person who has a
22 blood-alcohol level or breath-alcohol level of 0.16 ~~0.20~~ or
23 higher.

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

27 (a) For the first conviction, the court shall place
28 the defendant on probation for a period not to exceed 1 year
29 and, as a condition of such probation, shall order the
30 defendant to participate in public service or a community work
31 project for a minimum of 50 hours; or the court may order

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1 instead, that any defendant pay an additional fine of \$10 for
2 each hour of public service or community work otherwise
3 required, if, after consideration of the residence or location
4 of the defendant at the time public service or community work
5 is required, payment of the fine is in the best interests of
6 the state. However, the total period of probation and
7 incarceration may not exceed 1 year. The court must also, as a
8 condition of probation, order the impoundment or
9 immobilization of the vehicle that was operated by or in the
10 actual control of the defendant or any one vehicle registered
11 in the defendant's name at the time of impoundment or
12 immobilization, for a period of 10 days or for the unexpired
13 term of any lease or rental agreement that expires within 10
14 days. The impoundment or immobilization must not occur
15 concurrently with the incarceration of the defendant. The
16 impoundment or immobilization order may be dismissed in
17 accordance with paragraph (e), paragraph (f), or paragraph
18 (g).

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

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1 accordance with paragraph (e), paragraph (f), or paragraph
2 (g). At least 48 hours of confinement must be consecutive.

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

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

26 (e) A person who owns but was not operating the
27 vehicle when the offense occurred may submit to the court a
28 police report indicating that the vehicle was stolen at the
29 time of the offense or documentation of having purchased the
30 vehicle after the offense was committed from an entity other
31 than the defendant or the defendant's agent. If the court

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1 finds that the vehicle was stolen or that the sale was not
2 made to circumvent the order and allow the defendant continued
3 access to the vehicle, the order must be dismissed and the
4 owner of the vehicle will incur no costs. If the court denies
5 the request to dismiss the order of impoundment or
6 immobilization, the petitioner may request an evidentiary
7 hearing.

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

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

25 (h) All costs and fees for the impoundment or
26 immobilization, including the cost of notification, must be
27 paid by the owner of the vehicle or, if the vehicle is leased
28 or rented, by the person leasing or renting the vehicle,
29 unless the impoundment or immobilization order is dismissed.
30 All provisions of s. 713.78 shall apply.

31 (i) The person who owns a vehicle that is impounded or

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1 immobilized under this paragraph, or a person who has a lien
2 of record against such a vehicle and who has not requested a
3 review of the impoundment pursuant to paragraph (e), paragraph
4 (f), or paragraph (g), may, within 10 days after the date that
5 person has knowledge of the location of the vehicle, file a
6 complaint in the county in which the owner resides to
7 determine whether the vehicle was wrongfully taken or withheld
8 from the owner or lienholder. Upon the filing of a complaint,
9 the owner or lienholder may have the vehicle released by
10 posting with the court a bond or other adequate security equal
11 to the amount of the costs and fees for impoundment or
12 immobilization, including towing or storage, to ensure the
13 payment of such costs and fees if the owner or lienholder does
14 not prevail. When the bond is posted and the fee is paid as
15 set forth in s. 28.24, the clerk of the court shall issue a
16 certificate releasing the vehicle. At the time of release,
17 after reasonable inspection, the owner or lienholder must give
18 a receipt to the towing or storage company indicating any loss
19 or damage to the vehicle or to the contents of the vehicle.

20 (j) A defendant, in the court's discretion, may be
21 required to serve all or any portion of a term of imprisonment
22 to which the defendant has been sentenced pursuant to this
23 section in a residential alcoholism treatment program or a
24 residential drug abuse treatment program. Any time spent in
25 such a program must be credited by the court toward the term
26 of imprisonment.

27
28 For the purposes of this section, any conviction for a
29 violation of s. 327.35; a previous conviction for the
30 violation of former s. 316.1931, former s. 327.351, former s.
31 860.01, or former s. 316.028; or a previous conviction outside

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1 this state for driving or boating under the influence, driving
2 or boating while intoxicated, driving or boating with an
3 unlawful blood-alcohol level, driving or boating with an
4 unlawful breath-alcohol level, or any other similar
5 alcohol-related or drug-related traffic or boating offense, is
6 also considered a previous conviction for violation of this
7 section. However, in satisfaction of the fine imposed pursuant
8 to this section, the court may, upon a finding that the
9 defendant is financially unable to pay either all or part of
10 the fine, order that the defendant participate for a specified
11 additional period of time in public service or a community
12 work project in lieu of payment of that portion of the fine
13 which the court determines the defendant is unable to pay. In
14 determining such additional sentence, the court shall consider
15 the amount of the unpaid portion of the fine and the
16 reasonable value of the services to be ordered; however, the
17 court may not compute the reasonable value of services at a
18 rate less than the federal minimum wage at the time of
19 sentencing.

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

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

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

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

31 (b) The arresting officer may place the person in

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1 protective custody pursuant to s. 397.6772 if:

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

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

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

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

12

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

23 Section 160. Section 316.1932, Florida Statutes, is
24 amended to read:

25 316.1932 Breath, blood, and urine tests for alcohol,
26 chemical substances, or controlled substances; implied
27 consent; refusal ~~right to refuse~~.--

28 (1)(a) Any person who accepts the privilege extended
29 by the laws of this state of operating a motor vehicle within
30 this state is, by so operating such vehicle, deemed to have
31 given his or her consent to submit to an approved chemical

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

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

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

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

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

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

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

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1 breath or the presence of chemical substances or controlled
2 substances; and, if so requested, the arresting officer shall
3 have the test performed.

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

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

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

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

28 2.a. Only a physician, certified paramedic, registered
29 nurse, licensed practical nurse, other personnel authorized by
30 a hospital to draw blood, or duly licensed clinical laboratory
31 director, supervisor, technologist, or technician, acting at

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

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

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

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

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1 providing notice or failing to provide notice. It shall not be
2 a breach of any ethical, moral, or legal duty for a health
3 care provider to provide notice or fail to provide notice.

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

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

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1 the independent test and shall provide the person with timely
2 telephone access to secure the test, but the burden is on the
3 person to arrange and secure the test at the person's own
4 expense.

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

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

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

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

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1 defense attorney, or law enforcement officer in connection
2 with an alleged violation of s. 316.193 upon request for such
3 information.

4 Section 161. Subsection (1) of section 316.1933,
5 Florida Statutes, is amended to read:

6 316.1933 Blood test for impairment or intoxication in
7 cases of death or serious bodily injury; right to use
8 reasonable force.--

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

30 (b) The term "serious bodily injury" means an injury
31 to any person, including the driver, which consists of a

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1 physical condition that creates a substantial risk of death,
2 serious personal disfigurement, or protracted loss or
3 impairment of the function of any bodily member or organ.

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

15 Section 162. Section 316.1939, Florida Statutes, is
16 created to read:

17 316.1939 Refusal to submit to testing; penalties.--

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

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

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

29 (c) Who was informed that if he or she refused to
30 submit to such test his or her privilege to operate a motor
31 vehicle would be suspended for a period of 1 year or, in the

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1 case of a second or subsequent refusal, for a period of 18
2 months, and that the refusal to submit to such test is a
3 misdemeanor; and

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

7
8 commits a misdemeanor of the first degree and is subject to
9 punishment as provided in s. 775.082 or s. 775.083.

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

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

16 Section 163. Subsections (2), (3), (4), (5), (6), (8),
17 and (10) of section 327.35, Florida Statutes, are amended to
18 read:

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

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

24 1. By a fine of:

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

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

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

31 2. By imprisonment for:

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1 a. Not more than 6 months for a first conviction.
2 b. Not more than 9 months for a second conviction.
3 ~~c. Not more than 12 months for a third conviction.~~
4 (b) Any person who is convicted of a third ~~fourth~~ or
5 subsequent violation of this section is guilty of a felony of
6 the third degree, punishable as provided in s. 775.082, s.
7 775.083, or s. 775.084; however, the fine imposed for such
8 third ~~fourth~~ or subsequent violation may not be less than
9 \$1,000.

10 (3) Any person:

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

12 (b) Who operates a vessel; and

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

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

18 2. Serious bodily injury to another, as defined in s.
19 327.353 ~~316.1933~~, commits a felony of the third degree,
20 punishable as provided in s. 775.082, s. 775.083, or s.
21 775.084.

22 3. The death of any human being commits BUI
23 manslaughter, and commits:

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

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

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

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

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

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

(a) By a fine of:

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

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

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

(b) By imprisonment for:

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

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

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

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

(5) In addition to any sentence or fine, the court shall place all offenders ~~any offender~~ convicted of violating this section on monthly reporting probation and shall require completion of ~~attendance at~~ a substance abuse course specified by the court, which must include a psychosocial evaluation of the offender. ~~If~~ ~~and~~ the agency conducting the course refers

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1 ~~may refer~~ the offender to an authorized substance abuse
2 treatment service provider for substance abuse ~~evaluation and~~
3 ~~treatment~~, in addition to any sentence or fine imposed under
4 ~~this section, completion of all such education, evaluation,~~
5 ~~and treatment is a condition of reporting probation.~~ The
6 offender shall assume reasonable costs for such education,
7 evaluation, and treatment, ~~with completion of all such~~
8 ~~education, evaluation, and treatment being a condition of~~
9 ~~reporting probation.~~ The referral to treatment resulting from
10 a psychosocial evaluation shall ~~may~~ not be waived without a
11 supporting independent psychosocial evaluation conducted by an
12 authorized substance abuse treatment provider agency appointed
13 by the court, which shall have ~~and with~~ access to the original
14 psychosocial evaluation before the independent psychosocial
15 evaluation is completed. The court shall review the results
16 and recommendations of both evaluations before determining the
17 request for waiver. The offender shall bear the full cost of
18 this procedure. The term "substance abuse" means the abuse of
19 alcohol or any substance named or described in Schedules I
20 through V of s. 893.03. If an offender referred to treatment
21 under this subsection fails to report for or complete such
22 treatment or fails to complete the substance abuse education
23 course and evaluation, the agency conducting the course shall
24 notify the court and the offender's probation officer of the
25 failure. Upon receipt of the notice, the court shall order
26 the offender not to operate any vessel upon the waters of this
27 state for the remainder of the period of probation.

28 (6) With respect to any person convicted of a
29 violation of subsection (1), regardless of any other penalty
30 imposed:

31 (a) For the first conviction, the court shall place

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1 the defendant on probation for a period not to exceed 1 year
2 and, as a condition of such probation, shall order the
3 defendant to participate in public service or a community work
4 project for a minimum of 50 hours. The court must also, as a
5 condition of probation, order the impoundment or
6 immobilization of the vessel that was operated by or in the
7 actual control of the defendant or any one vehicle registered
8 in the defendant's name at the time of impoundment or
9 immobilization, for a period of 10 days or for the unexpired
10 term of any lease or rental agreement that expires within 10
11 days. The impoundment or immobilization must not occur
12 concurrently with the incarceration of the defendant. The
13 impoundment or immobilization order may be dismissed in
14 accordance with paragraph (e) or paragraph (f). The total
15 period of probation and incarceration may not exceed 1 year.

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

31 (c) For the third or subsequent conviction for an

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

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

25 (e) A person who owns but was not operating the vessel
26 when the offense occurred may submit to the court a police
27 report indicating that the vessel was stolen at the time of
28 the offense or documentation of having purchased the vessel
29 after the offense was committed from an entity other than the
30 defendant or the defendant's agent. If the court finds that
31 the vessel was stolen or that the sale was not made to

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1 circumvent the order and allow the defendant continued access
2 to the vessel, the order must be dismissed and the owner of
3 the vessel will incur no costs. If the court denies the
4 request to dismiss the order of impoundment or immobilization,
5 the petitioner may request an evidentiary hearing.

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

19 (g) All costs and fees for the impoundment or
20 immobilization, including the cost of notification, must be
21 paid by the owner of the vessel or, if the vessel is leased or
22 rented, by the person leasing or renting the vessel, unless
23 the impoundment or immobilization order is dismissed.

24 (h) The person who owns a vessel that is impounded or
25 immobilized under this paragraph, or a person who has a lien
26 of record against such a vessel and who has not requested a
27 review of the impoundment pursuant to paragraph (e) or
28 paragraph (f), may, within 10 days after the date that person
29 has knowledge of the location of the vessel, file a complaint
30 in the county in which the owner resides to determine whether
31 the vessel was wrongfully taken or withheld from the owner or

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1 lienholder. Upon the filing of a complaint, the owner or
2 lienholder may have the vessel released by posting with the
3 court a bond or other adequate security equal to the amount of
4 the costs and fees for impoundment or immobilization,
5 including towing or storage, to ensure the payment of the
6 costs and fees if the owner or lienholder does not prevail.
7 When the bond is posted and the fee is paid as set forth in s.
8 28.24, the clerk of the court shall issue a certificate
9 releasing the vessel. At the time of release, after reasonable
10 inspection, the owner or lienholder must give a receipt to the
11 towing or storage company indicating any loss or damage to the
12 vessel or to the contents of the vessel.

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

20
21 For the purposes of this section, any conviction for a
22 violation of s. 316.193, a previous conviction for the
23 violation of former s. 316.1931, former s. 327.351, former s.
24 860.01, or former s. 316.028, or a previous conviction outside
25 this state for driving or boating under the influence, driving
26 or boating while intoxicated, driving or boating with an
27 unlawful blood-alcohol level, driving or boating with an
28 unlawful breath-alcohol level, or any other similar
29 alcohol-related or drug-related traffic or boating offense, is
30 also considered a previous conviction for violation of this
31 section.

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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

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

3 (10) It is the intent of the Legislature to encourage
4 boaters to have a "designated driver." Therefore, this section
5 shall not apply to a person on a vessel that is docked or
6 otherwise made fast to the shore and shall not apply to a
7 vessel owner or operator who is not in actual physical control
8 of the vessel and who has designated a driver who does not
9 consume any alcoholic beverages, any chemical substance set
10 forth in s. 877.111, or any substance controlled under chapter
11 893.

12 Section 164. Section 327.352, Florida Statutes, is
13 amended to read:

14 327.352 Breath, blood, and urine tests for alcohol,
15 chemical substances, or controlled substances; implied
16 consent; refusal ~~right to refuse~~.--

17 (1)(a) The Legislature declares that the operation of
18 a vessel is a privilege that must be exercised in a reasonable
19 manner. In order to protect the public health and safety, it
20 is essential that a lawful and effective means of reducing the
21 incidence of boating while impaired or intoxicated be
22 established. Therefore, any person who accepts the privilege
23 extended by the laws of this state of operating a vessel
24 within this state is, by so operating such vessel, deemed to
25 have given his or her consent to submit to an approved
26 chemical test or physical test including, but not limited to,
27 an infrared light test of his or her breath for the purpose of
28 determining the alcoholic content of his or her blood or
29 breath, and to a urine test for the purpose of detecting the
30 presence of chemical substances as set forth in s. 877.111 or
31 controlled substances, if the person is lawfully arrested for

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

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

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1 admissible in evidence in any criminal proceeding.

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

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

25 2. Only a physician, certified paramedic, registered
26 nurse, licensed practical nurse, other personnel authorized by
27 a hospital to draw blood, or duly licensed clinical laboratory
28 director, supervisor, technologist, or technician, acting at
29 the request of a law enforcement officer, may withdraw blood
30 for the purpose of determining its alcoholic content or the
31 presence of chemical substances or controlled substances

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1 therein. However, the failure of a law enforcement officer to
2 request the withdrawal of blood does not affect the
3 admissibility of a test of blood withdrawn for medical
4 purposes.

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

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

29 5. A hospital, clinical laboratory, medical clinic, or
30 similar medical institution or physician, certified paramedic,
31 registered nurse, licensed practical nurse, other personnel

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

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

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

24 Section 165. Subsection (1) of section 327.353,
25 Florida Statutes, is amended to read:

26 327.353 Blood test for impairment or intoxication in
27 cases of death or serious bodily injury; right to use
28 reasonable force.--

29 ~~(1)(a) Notwithstanding any recognized ability to~~
30 ~~refuse to submit to the tests provided in s. 327.352 or any~~
31 ~~recognized power to revoke the implied consent to such tests,~~

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1 If a law enforcement officer has probable cause to believe
2 that a vessel operated by a person under the influence of
3 alcoholic beverages, any chemical substances, or any
4 controlled substances has caused the death or serious bodily
5 injury of a human being, ~~the person shall submit, upon the~~
6 ~~request of~~ a law enforcement officer shall require the person
7 operating or in actual physical control of the vessel to
8 submit, to a test of the person's blood for the purpose of
9 determining the alcoholic content thereof or the presence of
10 chemical substances as set forth in s. 877.111 or any
11 substance controlled under chapter 893. The law enforcement
12 officer may use reasonable force if necessary to require the
13 person to submit to the administration of the blood test. The
14 blood test shall be performed in a reasonable manner.
15 Notwithstanding s. 327.352, 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 operator, 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 shall
28 not apply to any person who is unconscious or whose mental or
29 physical condition does not allow the administration of a
30 breath test or any person whom the law enforcement officer has
31 probable cause to believe was operating a vessel under the

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

3 Section 166. Section 327.359, Florida Statutes, is
4 created to read:

5 327.359 Refusal to submit to testing;
6 penalties.-- Any person who has refused to submit to a
7 chemical or physical test of his or her breath, blood, or
8 urine, as described in s. 327.352, and:

9 (1) Whom the arresting law enforcement officer had
10 probable cause to believe was operating or in actual physical
11 control of a vessel in this state while under the influence of
12 alcoholic beverages, chemical substances, or controlled
13 substances;

14 (2) Who was placed under lawful arrest for a violation
15 of s. 327.35, unless such test was requested pursuant to s.
16 327.352(1)(c);

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

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

23
24 commits a misdemeanor of the first degree and is subject to
25 punishment as provided in s. 775.082 or s. 775.083.

26 Section 167. 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

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

31 921.0022 Criminal Punishment Code; offense severity

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1 ranking chart.--
2 (3) OFFENSE SEVERITY RANKING CHART
3
4 Florida Felony
5 Statute Degree Description
6
7
8 (f) LEVEL 6
9 316.027(1)(b) 2nd Accident involving death, failure
10 to stop; leaving scene.
11 316.193(2)(b) 3rd Felony DUI, 3rd ~~4th~~ or subsequent
12 conviction.
13 327.35(2)(b) 3rd Felony BUI, 3rd or subsequent
14 conviction.
15 775.0875(1) 3rd Taking firearm from law
16 enforcement officer.
17 775.21(10) 3rd Sexual predators; failure to
18 register; failure to renew
19 driver's license or
20 identification card.
21 784.021(1)(a) 3rd Aggravated assault; deadly weapon
22 without intent to kill.
23 784.021(1)(b) 3rd Aggravated assault; intent to
24 commit felony.
25 784.041 3rd Felony battery.
26 784.048(3) 3rd Aggravated stalking; credible
27 threat.
28 784.048(5) 3rd Aggravated stalking of person
29 under 16.
30 784.07(2)(c) 2nd Aggravated assault on law
31 enforcement officer.

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1	784.08(2)(b)	2nd	Aggravated assault on a person 65
2			years of age or older.
3	784.081(2)	2nd	Aggravated assault on specified
4			official or employee.
5	784.082(2)	2nd	Aggravated assault by detained
6			person on visitor or other
7			detainee.
8	784.083(2)	2nd	Aggravated assault on code
9			inspector.
10	787.02(2)	3rd	False imprisonment; restraining
11			with purpose other than those in
12			s. 787.01.
13	790.115(2)(d)	2nd	Discharging firearm or weapon on
14			school property.
15	790.161(2)	2nd	Make, possess, or throw
16			destructive device with intent to
17			do bodily harm or damage
18			property.
19	790.164(1)	2nd	False report of deadly explosive
20			or act of arson or violence to
21			state property.
22	790.19	2nd	Shooting or throwing deadly
23			missiles into dwellings, vessels,
24			or vehicles.
25	794.011(8)(a)	3rd	Solicitation of minor to
26			participate in sexual activity by
27			custodial adult.
28	794.05(1)	2nd	Unlawful sexual activity with
29			specified minor.
30	800.04(5)(d)	3rd	Lewd or lascivious molestation;
31			victim 12 years of age or older

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1			but less than 16 years; offender
2			less than 18 years.
3	800.04(6)(b)	2nd	Lewd or lascivious conduct;
4			offender 18 years of age or
5			older.
6	806.031(2)	2nd	Arson resulting in great bodily
7			harm to firefighter or any other
8			person.
9	810.02(3)(c)	2nd	Burglary of occupied structure;
10			unarmed; no assault or battery.
11	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
12			but less than \$100,000, grand
13			theft in 2nd degree.
14	812.13(2)(c)	2nd	Robbery, no firearm or other
15			weapon (strong-arm robbery).
16	817.034(4)(a)1.	1st	Communications fraud, value
17			greater than \$50,000.
18	817.4821(5)	2nd	Possess cloning paraphernalia
19			with intent to create cloned
20			cellular telephones.
21	825.102(1)	3rd	Abuse of an elderly person or
22			disabled adult.
23	825.102(3)(c)	3rd	Neglect of an elderly person or
24			disabled adult.
25	825.1025(3)	3rd	Lewd or lascivious molestation of
26			an elderly person or disabled
27			adult.
28	825.103(2)(c)	3rd	Exploiting an elderly person or
29			disabled adult and property is
30			valued at less than \$20,000.
31	827.03(1)	3rd	Abuse of a child.

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1	827.03(3)(c)	3rd	Neglect of a child.
2	827.071(2)&(3)	2nd	Use or induce a child in a sexual
3			performance, or promote or direct
4			such performance.
5	836.05	2nd	Threats; extortion.
6	836.10	2nd	Written threats to kill or do
7			bodily injury.
8	843.12	3rd	Aids or assists person to escape.
9	847.0135(3)	3rd	Solicitation of a child, via a
10			computer service, to commit an
11			unlawful sex act.
12	914.23	2nd	Retaliation against a witness,
13			victim, or informant, with bodily
14			injury.
15	943.0435(9)	3rd	Sex offenders; failure to comply
16			with reporting requirements.
17	944.35(3)(a)2.	3rd	Committing malicious battery upon
18			or inflicting cruel or inhuman
19			treatment on an inmate or
20			offender on community
21			supervision, resulting in great
22			bodily harm.
23	944.40	2nd	Escapes.
24	944.46	3rd	Harboring, concealing, aiding
25			escaped prisoners.
26	944.47(1)(a)5.	2nd	Introduction of contraband
27			(firearm, weapon, or explosive)
28			into correctional facility.
29	951.22(1)	3rd	Intoxicating drug, firearm, or
30			weapon introduced into county
31			facility.

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1			(i) LEVEL 9
2	316.193		
3	(3)(c)3.b.	1st	DUI manslaughter; failing to
4			render aid or give information.
5	<u>327.35(3)(c)3.b.</u>	<u>1st</u>	<u>BUI manslaughter; failing to</u>
6			<u>render aid or give information.</u>
7	782.04(1)	1st	Attempt, conspire, or solicit to
8			commit premeditated murder.
9	782.04(3)	1st,PBL	Accomplice to murder in
10			connection with arson, sexual
11			battery, robbery, burglary, and
12			other specified felonies.
13	782.051(1)	1st	Attempted felony murder while
14			perpetrating or attempting to
15			perpetrate a felony enumerated in
16			s. 782.04(3).
17	782.07(2)	1st	Aggravated manslaughter of an
18			elderly person or disabled adult.
19	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
20			reward or as a shield or hostage.
21	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
22			or facilitate commission of any
23			felony.
24	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
25			interfere with performance of any
26			governmental or political
27			function.
28	787.02(3)(a)	1st	False imprisonment; child under
29			age 13; perpetrator also commits
30			aggravated child abuse, sexual
31			battery, or lewd or lascivious

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1			battery, molestation, conduct, or
2			exhibition.
3	790.161	1st	Attempted capital destructive
4			device offense.
5	794.011(2)	1st	Attempted sexual battery; victim
6			less than 12 years of age.
7	794.011(2)	Life	Sexual battery; offender younger
8			than 18 years and commits sexual
9			battery on a person less than 12
10			years.
11	794.011(4)	1st	Sexual battery; victim 12 years
12			or older, certain circumstances.
13	794.011(8)(b)	1st	Sexual battery; engage in sexual
14			conduct with minor 12 to 18 years
15			by person in familial or
16			custodial authority.
17	800.04(5)(b)	1st	Lewd or lascivious molestation;
18			victim less than 12 years;
19			offender 18 years or older.
20	812.13(2)(a)	1st,PBL	Robbery with firearm or other
21			deadly weapon.
22	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
23			deadly weapon.
24	827.03(2)	1st	Aggravated child abuse.
25	847.0145(1)	1st	Selling, or otherwise
26			transferring custody or control,
27			of a minor.
28	847.0145(2)	1st	Purchasing, or otherwise
29			obtaining custody or control, of
30			a minor.
31			

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

25 Section 169. Section 938.07, Florida Statutes, is
26 amended to read:

27 938.07 Driving or boating under the
28 influence.--Notwithstanding any other provision of s. 316.193
29 or s. 327.35, a court cost of \$135 shall be added to any fine
30 imposed pursuant to s. 316.193 or s. 327.35, of which \$25
31 shall be deposited in the Emergency Medical Services Trust

Amendment No. 01a (for drafter's use only)

1 Fund, \$50 shall be deposited in the Criminal Justice Standards
2 and Training Trust Fund of the Department of Law Enforcement
3 to be used for operational expenses in conducting the
4 statewide criminal analysis laboratory system established in
5 s. 943.32, and \$60 shall be deposited in the Brain and Spinal
6 Cord Injury Rehabilitation Trust Fund created in s. 381.79
7 ~~413.613~~.

8 Section 170. This act shall take effect upon becoming
9 law, except for sections 159 through 169, which shall take
10 effect January 1, 2001.

11
12

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

14 And the title is amended as follows:

15 On page 205, line 11, after the semicolon,

16

17 insert:

18 amending s. 316.193, F.S.; reducing the number
19 of convictions required for a felony DUI;
20 amending conditions for conviction in cases of
21 accident, serious bodily injury, or death;
22 removing a cross reference; reducing
23 blood-alcohol or breath-alcohol level necessary
24 to enhance penalties; revising circumstances
25 for consideration of previous violations;
26 allowing a law enforcement officer to place a
27 person in protective custody under certain
28 circumstances; requiring a person placed in
29 protective custody to pay reasonable costs of
30 evaluation and treatment under certain
31 circumstances; amending s. 316.1932, F.S.;

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1 requiring a law enforcement officer to inform a
2 person that refusal to submit to certain tests
3 is a misdemeanor; amending s. 316.1933, F.S.;
4 requiring a person to submit to a blood test
5 under certain circumstances; providing that the
6 test need not be incidental to a lawful arrest;
7 providing that a breath-alcohol test may
8 substitute for a blood- alcohol test under
9 certain circumstances; creating s. 316.1939,
10 F.S.; providing a penalty for refusing to
11 submit to a chemical or physical test of
12 breath, urine, or blood; providing application;
13 amending s. 327.35, F.S.; reducing the number
14 of convictions required for a felony BUI;
15 amending conditions for conviction in cases of
16 accident, serious bodily injury, or death;
17 correcting cross references; reducing
18 blood-alcohol or breath-alcohol level necessary
19 to enhance penalties; revising circumstances
20 for consideration of previous violations;
21 requiring psychosocial evaluation under certain
22 circumstances; requiring court to order
23 defendant not to operate vessels under certain
24 circumstances; allowing a law enforcement
25 officer to place a person in protective custody
26 under certain circumstances; requiring a person
27 placed in protective custody to pay reasonable
28 costs of evaluation and treatment under certain
29 circumstances; providing for designated driver
30 defense to BUI; amending s. 327.352, F.S.;

31 requiring a law enforcement officer to inform a

Amendment No. 01a (for drafter's use only)

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

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