

By the Committee on Criminal Justice; and Senator Burt

307-2069-02

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.; increasing the
5 penalties for a third conviction of driving
6 under the influence to a third-degree felony if
7 committed within specified periods following a
8 prior conviction; increasing the penalty for a
9 fourth or subsequent violation of driving under
10 the influence to a third-degree felony
11 regardless of when any prior conviction
12 occurred; requiring mandatory placement of an
13 interlock device under certain circumstances;
14 amending s. 316.1933, F.S.; requiring a person
15 to submit to a blood test under certain
16 circumstances; providing that the test need not
17 be incidental to a lawful arrest; providing
18 that a breath-alcohol test may substitute for a
19 blood-alcohol test under certain circumstances;
20 amending s. 327.35, F.S.; increasing the
21 penalties for a third conviction of operating a
22 vessel under the influence to a third-degree
23 felony if committed within specified periods
24 following a prior conviction; increasing the
25 penalty for a fourth or subsequent violation of
26 operating a vessel under the influence to a
27 third-degree felony regardless of when any
28 prior conviction occurred; amending s. 327.353,
29 F.S.; requiring a person to submit to a blood
30 test under certain circumstances; providing
31 that the test need not be incidental to a

1 lawful arrest; providing that a breath-alcohol
2 test may substitute for a blood-alcohol test
3 under certain circumstances; amending s.
4 921.0022, F.S.; revising provisions relating to
5 certain DUI offenses; including certain BUI
6 offenses within the offense severity ranking
7 chart; amending s. 938.07, F.S.; providing for
8 application of a fee to persons found guilty of
9 boating under the influence; correcting a
10 cross-reference; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsections (2) and (4) of section 316.193,
15 Florida Statutes, are amended to read:

16 316.193 Driving under the influence; penalties.--

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

20 1. By a fine of:

21 a. Not less than \$250 or more than \$500 for a first
22 conviction.

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

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

27 2. By imprisonment for:

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

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

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

31

1 (b)1. Any person who is convicted of a third ~~fourth~~ or
2 ~~subsequent~~ violation of this section within 10 years after any
3 prior conviction for a violation of this section commits is
4 ~~guilty~~ of a felony of the third degree, punishable as provided
5 in s. 775.082, s. 775.083, or s. 775.084. In addition, the
6 court shall order the mandatory placement for a period of not
7 less than 2 years, at the convicted person's sole expense, of
8 an interlock device approved by the Department of Highway
9 Safety and Motor Vehicles upon all vehicles that are
10 individually or jointly owned and that are routinely operated
11 by the convicted person.†

12 2. Any person who is convicted of a third violation of
13 this section after 10 years following any prior conviction for
14 a violation of this section shall be punished by a fine of not
15 less than \$1,000 or more than \$2,500 and by imprisonment for
16 not more than 12 months.

17 3. Any person who is convicted of a fourth or
18 subsequent violation of this section, regardless of when any
19 prior conviction for a violation of this section occurred,
20 commits a felony of the third degree, punishable as provided
21 in s. 775.082, s. 775.083, or s. 775.084. In addition, the
22 court shall order the mandatory placement for a period of not
23 less than 2 years, at the convicted person's sole expense, of
24 an interlock device approved by the Department of Highway
25 Safety and Motor Vehicles upon all vehicles that are
26 individually or jointly owned and that are routinely operated
27 by the convicted person.

28
29 However, the fine imposed for a third ~~such fourth~~ or
30 subsequent violation may be not less than \$1,000.

31

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 0.20 or higher, or any person who is
4 convicted of a violation of subsection (1) and who at the time
5 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 0.20 or higher.

23 Section 2. 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 who the law enforcement officer
31 has probable cause to believe was operating a motor vehicle

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

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

5 327.35 Boating under the influence; penalties;
6 "designated drivers".--

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

10 1. By a fine of:

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

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

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

17 2. By imprisonment for:

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

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

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

21 (b)1. Any person who is convicted of a third ~~fourth or~~
22 ~~subsequent~~ violation of this section within 10 years after any
23 prior conviction for a violation of this section commits is
24 ~~guilty of~~ a felony of the third degree, punishable as provided
25 in s. 775.082, s. 775.083, or s. 775.084.~~†~~

26 2. Any person who is convicted of a third violation of
27 this section after 10 years following any prior conviction for
28 a violation of this section shall be punished by a fine of not
29 less than \$1,000 or more than \$2,500 and by imprisonment for
30 not more than 12 months.

1 3. Any person who is convicted of a fourth or
2 subsequent violation of this section, regardless of when any
3 prior conviction for a violation of this section occurred,
4 commits a felony of the third degree, punishable as provided
5 in s. 775.082, s. 775.083, or s. 775.084.

6
7 However, the fine imposed for a third ~~such fourth~~ or
8 subsequent violation may not be less than \$1,000.

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

15 (a) By a fine of:

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

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

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

22 (b) By imprisonment for:

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

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

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

26
27 For the purposes of this subsection, only the instant offense
28 is required to be a violation of subsection (1) by a person
29 who has a blood-alcohol level or breath-alcohol level of 0.20
30 or higher.

31

1 Section 4. Subsection (1) of section 327.353, Florida
2 Statutes, is amended to read:

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

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

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

31

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

12 Section 5. Paragraphs (f) and (i) of subsection (3) of
13 section 921.0022, Florida Statutes, as amended by chapter
14 2001-358, Laws of Florida, are amended to read:

15 921.0022 Criminal Punishment Code; offense severity
16 ranking chart.--

17 (3) OFFENSE SEVERITY RANKING CHART

19 Florida	Felony	
20 Statute	Degree	Description
		(f) LEVEL 6
24 316.027(1)(b)	2nd	Accident involving death, failure 25 to stop; leaving scene.
26 316.193(2)(b)	3rd	Felony DUI, 4th or subsequent 27 conviction.
28 <u>327.35(2)(b)</u>	<u>3rd</u>	<u>Felony BUI.</u>
29 775.0875(1)	3rd	Taking firearm from law 30 enforcement officer.

31

1	775.21(10)	3rd	Sexual predators; failure to
2			register; failure to renew
3			driver's license or
4			identification card.
5	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
6			without intent to kill.
7	784.021(1)(b)	3rd	Aggravated assault; intent to
8			commit felony.
9	784.041	3rd	Felony battery.
10	784.048(3)	3rd	Aggravated stalking; credible
11			threat.
12	784.048(5)	3rd	Aggravated stalking of person
13			under 16.
14	784.07(2)(c)	2nd	Aggravated assault on law
15			enforcement officer.
16	784.074(1)(b)	2nd	Aggravated assault on sexually
17			violent predators facility staff.
18	784.08(2)(b)	2nd	Aggravated assault on a person 65
19			years of age or older.
20	784.081(2)	2nd	Aggravated assault on specified
21			official or employee.
22	784.082(2)	2nd	Aggravated assault by detained
23			person on visitor or other
24			detainee.
25	784.083(2)	2nd	Aggravated assault on code
26			inspector.
27	787.02(2)	3rd	False imprisonment; restraining
28			with purpose other than those in
29			s. 787.01.
30	790.115(2)(d)	2nd	Discharging firearm or weapon on
31			school property.

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

1	812.014(2)(b)2.	2nd	Property stolen cargo valued at
2			less than \$50,000, grand theft in
3			2nd degree.
4	812.015(9)	2nd	Retail theft; property stolen
5			\$300 or more; second or
6			subsequent conviction.
7	812.13(2)(c)	2nd	Robbery, no firearm or other
8			weapon (strong-arm robbery).
9	817.034(4)(a)1.	1st	Communications fraud, value
10			greater than \$50,000.
11	817.4821(5)	2nd	Possess cloning paraphernalia
12			with intent to create cloned
13			cellular telephones.
14	825.102(1)	3rd	Abuse of an elderly person or
15			disabled adult.
16	825.102(3)(c)	3rd	Neglect of an elderly person or
17			disabled adult.
18	825.1025(3)	3rd	Lewd or lascivious molestation of
19			an elderly person or disabled
20			adult.
21	825.103(2)(c)	3rd	Exploiting an elderly person or
22			disabled adult and property is
23			valued at less than \$20,000.
24	827.03(1)	3rd	Abuse of a child.
25	827.03(3)(c)	3rd	Neglect of a child.
26	827.071(2)&(3)	2nd	Use or induce a child in a sexual
27			performance, or promote or direct
28			such performance.
29	836.05	2nd	Threats; extortion.
30	836.10	2nd	Written threats to kill or do
31			bodily injury.

1	843.12	3rd	Aids or assists person to escape.
2	847.0135(3)	3rd	Solicitation of a child, via a
3			computer service, to commit an
4			unlawful sex act.
5	914.23	2nd	Retaliation against a witness,
6			victim, or informant, with bodily
7			injury.
8	943.0435(9)	3rd	Sex offenders; failure to comply
9			with reporting requirements.
10	944.35(3)(a)2.	3rd	Committing malicious battery upon
11			or inflicting cruel or inhuman
12			treatment on an inmate or
13			offender on community
14			supervision, resulting in great
15			bodily harm.
16	944.40	2nd	Escapes.
17	944.46	3rd	Harboring, concealing, aiding
18			escaped prisoners.
19	944.47(1)(a)5.	2nd	Introduction of contraband
20			(firearm, weapon, or explosive)
21			into correctional facility.
22	951.22(1)	3rd	Intoxicating drug, firearm, or
23			weapon introduced into county
24			facility.
25			
26			(i) LEVEL 9
27	316.193		
28	(3)(c)3.b.	1st	DUI manslaughter; failing to
29			render aid or give information.
30	<u>327.35(3)(c)3.b.</u>	<u>1st</u>	<u>BUI manslaughter; failing to</u>
31			<u>render aid or give information.</u>

1	560.123(8)(b)3.	1st	Failure to report currency or
2			payment instruments totaling or
3			exceeding \$100,000 by money
4			transmitter.
5	560.125(5)(c)	1st	Money transmitter business by
6			unauthorized person, currency, or
7			payment instruments totaling or
8			exceeding \$100,000.
9	655.50(10)(b)3.	1st	Failure to report financial
10			transactions totaling or
11			exceeding \$100,000 by financial
12			institution.
13	755.0844	1st	Aggravated white collar crime.
14	782.04(1)	1st	Attempt, conspire, or solicit to
15			commit premeditated murder.
16	782.04(3)	1st,PBL	Accomplice to murder in
17			connection with arson, sexual
18			battery, robbery, burglary, and
19			other specified felonies.
20	782.051(1)	1st	Attempted felony murder while
21			perpetrating or attempting to
22			perpetrate a felony enumerated in
23			s. 782.04(3).
24	782.07(2)	1st	Aggravated manslaughter of an
25			elderly person or disabled adult.
26	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
27			reward or as a shield or hostage.
28	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
29			or facilitate commission of any
30			felony.
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	790.166(2)	1st,PBL	Possessing, selling, using, or
14			attempting to use a weapon of
15			mass destruction.
16	794.011(2)	1st	Attempted sexual battery; victim
17			less than 12 years of age.
18	794.011(2)	Life	Sexual battery; offender younger
19			than 18 years and commits sexual
20			battery on a person less than 12
21			years.
22	794.011(4)	1st	Sexual battery; victim 12 years
23			or older, certain circumstances.
24	794.011(8)(b)	1st	Sexual battery; engage in sexual
25			conduct with minor 12 to 18 years
26			by person in familial or
27			custodial authority.
28	800.04(5)(b)	1st	Lewd or lascivious molestation;
29			victim less than 12 years;
30			offender 18 years or older.
31			

1	812.13(2)(a)	1st,PBL	Robbery with firearm or other
2			deadly weapon.
3	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
4			deadly weapon.
5	827.03(2)	1st	Aggravated child abuse.
6	847.0145(1)	1st	Selling, or otherwise
7			transferring custody or control,
8			of a minor.
9	847.0145(2)	1st	Purchasing, or otherwise
10			obtaining custody or control, of
11			a minor.
12	859.01	1st	Poisoning or introducing
13			bacteria, radioactive materials,
14			viruses, or chemical compounds
15			into food, drink, medicine, or
16			water with intent to kill or
17			injure another person.
18	893.135	1st	Attempted capital trafficking
19			offense.
20	893.135(1)(a)3.	1st	Trafficking in cannabis, more
21			than 10,000 lbs.
22	893.135		
23	(1)(b)1.c.	1st	Trafficking in cocaine, more than
24			400 grams, less than 150
25			kilograms.
26	893.135		
27	(1)(c)1.c.	1st	Trafficking in illegal drugs,
28			more than 28 grams, less than 30
29			kilograms.
30			
31			

1 893.135
2 (1)(d)1.c. 1st Trafficking in phencyclidine,
3 more than 400 grams.
4 893.135
5 (1)(e)1.c. 1st Trafficking in methaqualone, more
6 than 25 kilograms.
7 893.135
8 (1)(f)1.c. 1st Trafficking in amphetamine, more
9 than 200 grams.
10 893.135
11 (1)(h)1.c. 1st Trafficking in
12 gamma-hydroxybutyric acid (GHB),
13 10 kilograms or more.
14 893.135
15 (1)(i)1.c. 1st Trafficking in 1,4-Butanediol, 10
16 kilograms or more.
17 893.135
18 (1)(j)2.c. 1st Trafficking in Phenethylamines,
19 400 grams or more.
20 896.101(5)(c) 1st Money laundering, financial
21 instruments totaling or exceeding
22 \$100,000.
23 896.104(4)(a)3. 1st Structuring transactions to evade
24 reporting or registration
25 requirements, financial
26 transactions totaling or
27 exceeding \$100,000.
28 Section 6. Section 938.07, Florida Statutes, is
29 amended to read:
30 938.07 Driving or boating under the
31 influence.--Notwithstanding any other provision of s. 316.193

1 or s. 327.35, a court cost of \$135 shall be added to any fine
2 imposed pursuant to s. 316.193 or s. 327.35. The clerks shall
3 remit the funds to the Department of Revenue, \$25 of which
4 shall be deposited in the Emergency Medical Services Trust
5 Fund, \$50 shall be deposited in the Criminal Justice Standards
6 and Training Trust Fund of the Department of Law Enforcement
7 to be used for operational expenses in conducting the
8 statewide criminal analysis laboratory system established in
9 s. 943.32, and \$60 shall be deposited in the Brain and Spinal
10 Cord Injury Rehabilitation Trust Fund created in s. 381.79.

11 Section 7. This act shall take effect July 1, 2002.

12
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 Senate Bill 1024

- 16 1. Requires that an ignition interlock device be installed
17 in vehicles of persons convicted of a third (if it
18 occurs within 10 years of a prior DUI conviction) or a
19 fourth DUI.
20 2. Provides for mandatory blood tests when there is
21 probable cause of DUI or BUI and serious injury or death
22 results.
23 3. Includes BUI in the third degree felony penalty
24 enhancement provisions of the bill.
25 4. Adds "BUI manslaughter when failing to give aid" to the
26 same level in the offense severity ranking chart as the
27 comparable DUI manslaughter offense.
28 5. Imposes a \$135 court cost for BUI convictions
29 (comparable to DUI convictions).
30
31