

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

11 Representative(s) Simmons offered the following:

13 **Amendment (with title amendment)**

14 Remove everything after the enacting clause

16 and insert:

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

19 316.193 Driving under the influence; penalties.--

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

23 1. By a fine of:

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

26 b. Not less than \$500 or more than \$1,000 for a second  
27 conviction and immediate mandatory placement of an ignition  
28 interlock device approved by the department in accordance with  
29 s. 316.1937 upon all vehicles owned individually or jointly  
30 and routinely operated by the convicted person, for a period  
31 of not less than 2 years.

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

3           2. By imprisonment for:

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

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

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

7           (b) Any person who is convicted of a third ~~fourth or~~  
8 ~~subsequent~~ violation of this section is guilty of a felony of  
9 the third degree, punishable as provided in s. 775.082, s.  
10 775.083, or s. 775.084; however, the fine imposed for such  
11 third ~~fourth or subsequent~~ violation may be not less than  
12 \$1,000 and immediate mandatory placement of an ignition  
13 interlock device approved by the department in accordance with  
14 s. 316.1937 upon all vehicles owned jointly and routinely  
15 operated by the convicted person for a period of not less than  
16 3 years.

17           (c) Any person who is convicted of a fourth or  
18 subsequent violation of this section commits a felony of the  
19 third degree, punishable as provided for in s. 775.082, s.  
20 775.083, or s. 775.084. However, the fine imposed for such a  
21 violation shall not be less than \$1,000.

22           (3) Any person:

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

24           (b) Who operates a vehicle; and

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

27           1. Damage to the property or person of another commits  
28 a misdemeanor of the first degree, punishable as provided in  
29 s. 775.082 or s. 775.083.

30           2. Serious bodily injury to another, as defined in s.  
31 316.1933, commits a felony of the third degree, punishable as

1 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

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

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

18 (a) By a fine of:

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

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

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

25 (b) By imprisonment for:

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

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

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

29

30 For the purposes of this subsection, ~~any conviction for a~~  
31 ~~violation of s. 327.35,~~ only the instant offense is required

1 to be a violation of subsection (1) by a person who has a  
2 blood-alcohol level or breath-alcohol level of 0.20 or higher.

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

5 1.(a) Until the person is no longer under the  
6 influence of alcoholic beverages, any chemical substance set  
7 forth in s. 877.111, or any substance controlled under chapter  
8 893 and affected to the extent that his or her normal  
9 faculties are impaired;

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

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

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

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

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

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

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

26  
27 The election to place a person in protective custody may be  
28 done at the time of arrest, but transfer of the person to a  
29 facility shall not occur prior to the conclusion of the time  
30 period set forth in paragraph (a) or the time that the person  
31 is released on bail, whichever is later. The provisions of

1 this paragraph are in addition to, not in lieu of, the  
2 provisions of subsection (5). A court shall order any person  
3 placed in protective custody pursuant to this paragraph who is  
4 subsequently convicted of a violation of this section to pay  
5 the reasonable costs of evaluation and treatment.

6 Section 2. Section 316.1932, Florida Statutes, is  
7 amended to read:

8 316.1932 Breath, blood, and urine tests for alcohol,  
9 chemical substances, or controlled substances; implied  
10 consent; refusal ~~right to refuse~~.--

11 (1)(a)1. Any person who accepts the privilege extended  
12 by the laws of this state of operating a motor vehicle within  
13 this state is, by so operating such vehicle, deemed to have  
14 given his or her consent to submit to an approved chemical  
15 test or physical test including, but not limited to, an  
16 infrared light test of his or her breath for the purpose of  
17 determining the alcoholic content of his or her blood or  
18 breath, and to a urine test for the purpose of detecting the  
19 presence of chemical substances as set forth in s. 877.111 or  
20 controlled substances, if the person is lawfully arrested for  
21 any offense allegedly committed while the person was driving  
22 or was in actual physical control of a motor vehicle while  
23 under the influence of alcoholic beverages, chemical  
24 substances, or controlled substances. The chemical or  
25 physical breath test must be incidental to a lawful arrest and  
26 administered at the request of a law enforcement officer who  
27 has reasonable cause to believe such person was driving or was  
28 in actual physical control of the motor vehicle within this  
29 state while under the influence of alcoholic beverages. The  
30 urine test must be incidental to a lawful arrest and  
31 administered at a detention facility or any other facility,

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

23           2. The Alcohol Testing Program within the Department  
24 of Law Enforcement is responsible for the regulation of the  
25 operation, inspection, and registration of breath test  
26 instruments utilized under the driving and boating under the  
27 influence provisions and related provisions located in this  
28 chapter and chapters 322 and 327. The program is responsible  
29 for the regulation of the individuals who operate, inspect,  
30 and instruct on the breath test instruments utilized in the  
31 driving and boating under the influence provisions and related

1 provisions located in this chapter and chapters 322 and 327.  
2 The program is further responsible for the regulation of blood  
3 analysts who conduct blood testing to be utilized under the  
4 driving and boating under the influence provisions and related  
5 provisions located in this chapter and chapters 322 and 327.  
6 The program shall:  
7       a. Establish uniform criteria for the issuance of  
8 permits to breath test operators, agency inspectors,  
9 instructors, blood analysts, and instruments.  
10       b. Have the authority to permit breath test operators,  
11 agency inspectors, instructors, blood analysts, and  
12 instruments.  
13       c. Have the authority to discipline and suspend,  
14 revoke, or renew the permits of breath test operators, agency  
15 inspectors, instructors, blood analysts, and instruments.  
16       d. Establish uniform requirements for instruction and  
17 curricula for the operation and inspection of approved  
18 instruments.  
19       e. Have the authority to specify one approved  
20 curriculum for the operation and inspection of approved  
21 instruments.  
22       f. Establish a procedure for the approval of breath  
23 test operator and agency inspector classes.  
24       g. Have the authority to approve or disapprove breath  
25 test instruments and accompanying paraphernalia for use  
26 pursuant to the driving and boating under the influence  
27 provisions and related provisions located in this chapter and  
28 chapters 322 and 327.  
29       h. With the approval of the executive director of the  
30 Department of Law Enforcement, make and enter into contracts  
31 and agreements with other agencies, organizations,

1 associations, corporations, individuals, or federal agencies  
2 as are necessary, expedient, or incidental to the performance  
3 of duties.

4 i. Issue final orders which include findings of fact  
5 and conclusions of law and which constitute final agency  
6 action for the purpose of chapter 120.

7 j. Enforce compliance with the provisions of this  
8 section through civil or administrative proceedings.

9 k. Make recommendations concerning any matter within  
10 the purview of this section, this chapter, chapter 322, or  
11 chapter 327.

12 l. Promulgate rules for the administration and  
13 implementation of this section, including definitions of  
14 terms.

15 m. Consult and cooperate with other entities for the  
16 purpose of implementing the mandates of this section.

17 n. Have the authority to approve the type of blood  
18 test utilized under the driving and boating under the  
19 influence provisions and related provisions located in this  
20 chapter and chapters 322 and 327.

21 o. Have the authority to specify techniques and  
22 methods for breath alcohol testing and blood testing utilized  
23 under the driving and boating under the influence provisions  
24 and related provisions located in this chapter and chapters  
25 322 and 327.

26 p. Have the authority to approve repair facilities for  
27 the approved breath test instruments, including the authority  
28 to set criteria for approval.

29

30 Nothing in this section shall be construed to supersede  
31 provisions in this chapter and chapters 322 and 327. The



1 specifications in this section are derived from the power and  
2 authority previously and currently possessed by the Department  
3 of Law Enforcement and are enumerated to conform with the  
4 mandates of chapter 99-379, Laws of Florida.

5 (b)1. The blood-alcohol level must be based upon grams  
6 of alcohol per 100 milliliters of blood. The breath-alcohol  
7 level must be based upon grams of alcohol per 210 liters of  
8 breath.

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

17 (c) Any person who accepts the privilege extended by  
18 the laws of this state of operating a motor vehicle within  
19 this state is, by operating such vehicle, deemed to have given  
20 his or her consent to submit to an approved blood test for the  
21 purpose of determining the alcoholic content of the blood or a  
22 blood test for the purpose of determining the presence of  
23 chemical substances or controlled substances as provided in  
24 this section if there is reasonable cause to believe the  
25 person was driving or in actual physical control of a motor  
26 vehicle while under the influence of alcoholic beverages or  
27 chemical or controlled substances and the person appears for  
28 treatment at a hospital, clinic, or other medical facility and  
29 the administration of a breath or urine test is impractical or  
30 impossible. As used in this paragraph, the term "other medical  
31 facility" includes an ambulance or other medical emergency

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

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

31 (e)1. By applying for a driver's license and by

1 accepting and using a driver's license, the person holding the  
2 driver's license is deemed to have expressed his or her  
3 consent to the provisions of this section.

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

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

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

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

1 request the withdrawal of blood does not affect the  
2 admissibility of a test of blood withdrawn for medical  
3 purposes.

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

19           c. The notice shall consist only of the name of the  
20 person being treated, the name of the person who drew the  
21 blood, the blood-alcohol level indicated by the test, and the  
22 date and time of the administration of the test.

23           d. Nothing contained in s. 395.3025(4), s. 456.057, or  
24 any applicable practice act affects the authority to provide  
25 notice under this section, and the health care provider is not  
26 considered to have breached any duty owed to the person under  
27 s. 395.3025(4), s. 456.057, or any applicable practice act by  
28 providing notice or failing to provide notice. It shall not be  
29 a breach of any ethical, moral, or legal duty for a health  
30 care provider to provide notice or fail to provide notice.

31           e. A civil, criminal, or administrative action may not

1 be brought against any person or health care provider  
2 participating in good faith in the provision of notice or  
3 failure to provide notice as provided in this section. Any  
4 person or health care provider participating in the provision  
5 of notice or failure to provide notice as provided in this  
6 section shall be immune from any civil or criminal liability  
7 and from any professional disciplinary action with respect to  
8 the provision of notice or failure to provide notice under  
9 this section. Any such participant has the same immunity with  
10 respect to participating in any judicial proceedings resulting  
11 from the notice or failure to provide notice.

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

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

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

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

22           (3) Notwithstanding any provision of law pertaining to  
23 the confidentiality of hospital records or other medical  
24 records, information relating to the alcoholic content of the  
25 blood or breath or the presence of chemical substances or  
26 controlled substances in the blood obtained pursuant to this  
27 section shall be released to a court, prosecuting attorney,  
28 defense attorney, or law enforcement officer in connection  
29 with an alleged violation of s. 316.193 upon request for such  
30 information.

31           Section 3. Subsection (1) of section 316.1933, Florida

1 Statutes, is amended to read:

2           316.1933 Blood test for impairment or intoxication in  
3 cases of death or serious bodily injury; right to use  
4 reasonable force.--

5           (1)(a) ~~Notwithstanding any recognized ability to~~  
6 ~~refuse to submit to the tests provided in s. 316.1932 or any~~  
7 ~~recognized power to revoke the implied consent to such tests,~~  
8 If a law enforcement officer has probable cause to believe  
9 that a motor vehicle driven by or in the actual physical  
10 control of a person under the influence of alcoholic  
11 beverages, any chemical substances, or any controlled  
12 substances has caused the death or serious bodily injury of a  
13 human being, ~~such person shall submit, upon the request of a~~  
14 law enforcement officer shall require the person driving or in  
15 actual physical control of the motor vehicle to submit to a  
16 test of the person's blood for the purpose of determining the  
17 alcoholic content thereof or the presence of chemical  
18 substances as set forth in s. 877.111 or any substance  
19 controlled under chapter 893. The law enforcement officer may  
20 use reasonable force if necessary to require such person to  
21 submit to the administration of the blood test. The blood  
22 test shall be performed in a reasonable manner.  
23 Notwithstanding s. 316.1932, 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 driver, 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           Section 4. Section 316.1937, Florida Statutes, is

1 amended to read:

2 316.1937 Ignition interlock devices, requiring;  
3 unlawful acts.--

4 (1) In addition to any other authorized penalties, the  
5 court may require that any person who is convicted of driving  
6 under the influence in violation of s. 316.193, ~~and who is~~  
7 ~~granted probation,~~ shall not operate a motor vehicle ~~during~~  
8 ~~the period of probation~~ unless that vehicle is equipped with a  
9 functioning ignition interlock device certified by the  
10 department as provided in s. 316.1938, and installed in such a  
11 manner that the vehicle will not start if the operator's blood  
12 alcohol level is in excess of 0.05 percent or as otherwise  
13 specified by the court. The court may require the use of an  
14 approved ignition interlock device for a ~~the~~ period of  
15 ~~probation, said period to be for~~ not less than 6 months, if  
16 the person is permitted to operate a motor vehicle, whether or  
17 not the privilege to operate a motor vehicle is restricted ~~or~~  
18 ~~not~~, as determined by the court. The court shall require  
19 placement of an ignition interlock device in accordance with  
20 s. 316.193(2)(a).

21 (2) If the court imposes the use of an ignition  
22 interlock device ~~as a condition of probation~~, the court shall:

23 (a) Stipulate on the record the requirement for, and  
24 the period of, the use of a certified ignition interlock  
25 device.

26 (b) Order that the records of the department reflect  
27 such requirement.

28 (c) Order that an ignition interlock device be  
29 installed, as the court may determine necessary, on any  
30 vehicle owned or operated by the person ~~probationer~~.

31 (d) Determine the person's ~~probationer's~~ ability to



1 pay for installation of the device if the person ~~probationer~~  
2 claims inability to pay. If the court determines that the  
3 person ~~probationer~~ is unable to pay for installation of the  
4 device, the court may order that any portion of a fine paid by  
5 the person ~~probationer~~ for a violation of s. 316.193 shall be  
6 allocated to defray the costs of installing the device.

7 (e) Require proof of installation of the device and  
8 periodic reporting to the department ~~probation officer~~ for  
9 verification of the operation of the device in the person's  
10 ~~probationer's~~ vehicle.

11 (3) If the court imposes the use of an ignition  
12 interlock device ~~as a term of probation~~ on a person whose  
13 driving privilege is not suspended or revoked, the court shall  
14 require the person to provide proof of compliance to the  
15 department ~~probation officer~~ within 30 days. If the person  
16 fails to provide proof of installation within that period,  
17 absent a finding by the court of good cause for that failure  
18 which is entered in the court record, the court shall notify  
19 the department ~~revoke or terminate the person's probation.~~

20 (4) If the court imposes the use of an ignition  
21 interlock device ~~as a term of probation~~ on a person whose  
22 driving privilege is suspended or revoked for a period of less  
23 than 3 years, the department shall require proof of compliance  
24 before reinstatement of the person's driving privilege.

25 (5)(a) In addition to any other provision of law, upon  
26 conviction of a violation of this section the department shall  
27 revoke the person's driving privilege for 1 year from the date  
28 of conviction. Upon conviction of a separate violation of  
29 this section during the same period of required use of an  
30 ignition interlock device, the department shall revoke the  
31 person's driving privilege for 5 years from the date of

1 conviction.

2 (b) Any person convicted of a violation of subsection  
3 (6) who does not have a driver's license shall, in addition to  
4 any other penalty provided by law, pay a fine of not less than  
5 \$250 or more than \$500 per each such violation. In the event  
6 that the person is unable to pay any such fine, the fine shall  
7 become a lien against the motor vehicle used in violation of  
8 subsection (6) and payment shall be made pursuant to s.  
9 316.3025(4).

10 (6)(a) It is unlawful to tamper with, or to circumvent  
11 the operation of, a court-ordered ignition interlock device.

12 (b) It is unlawful for any person whose driving  
13 privilege is restricted pursuant to this section to request or  
14 solicit any other person to blow into an ignition interlock  
15 device or to start a motor vehicle equipped with the device  
16 for the purpose of providing the person so restricted with an  
17 operable motor vehicle.

18 (c) It is unlawful to blow into an ignition interlock  
19 device or to start a motor vehicle equipped with the device  
20 for the purpose of providing an operable motor vehicle to a  
21 person whose driving privilege is restricted pursuant to this  
22 section.

23 (d) It is unlawful to knowingly lease or lend a motor  
24 vehicle to a person who has had his or her driving privilege  
25 restricted ~~under a condition of probation~~ as provided in this  
26 section, unless the vehicle is equipped with a functioning,  
27 certified ignition interlock device. Any person whose driving  
28 privilege is restricted under a condition of probation  
29 requiring an ignition interlock device shall notify any other  
30 person who leases or loans a motor vehicle to him or her of  
31 such driving restriction.

1           (7) Notwithstanding the provisions of this section, if  
2 a person is required to operate a motor vehicle in the course  
3 and scope of his or her employment and if the vehicle is owned  
4 by the employer, the person may operate that vehicle without  
5 installation of an approved ignition interlock device if the  
6 employer has been notified of such driving privilege  
7 restriction and if proof of that notification is with the  
8 vehicle. This employment exemption does not apply, however,  
9 if the business entity which owns the vehicle is owned or  
10 controlled by the person whose driving privilege has been  
11 restricted.

12           (8) In addition to the penalties provided in this  
13 section, a violation of this section is a noncriminal traffic  
14 infraction, punishable as a nonmoving violation as provided in  
15 chapter 318.

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

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

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

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

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

30           (c) Who was informed that refusal to submit to such  
31 test is a misdemeanor.

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

4  
5 commits a misdemeanor of the first degree and is subject to  
6 punishment as provided in s. 775.082 or s. 775.083.

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

10           (3) Except as provided in s. 316.193, the disposition  
11 of a criminal action under this section does not affect any  
12 administrative proceeding that relates to the suspension of a  
13 person's driving privilege.

14           Section 6. Paragraph (a) of subsection (2) of section  
15 322.271, Florida Statutes, is amended to read:

16           322.271 Authority to modify revocation, cancellation,  
17 or suspension order.--

18           (2)(a) Upon such hearing, the person whose license has  
19 been suspended, canceled, or revoked may show that such  
20 suspension, cancellation, or revocation of his or her license  
21 causes a serious hardship and precludes the person's carrying  
22 out his or her normal business occupation, trade, or  
23 employment and that the use of the person's license in the  
24 normal course of his or her business is necessary to the  
25 proper support of the person or his or her family. Except as  
26 otherwise provided in this subsection, the department shall  
27 require proof of the successful completion of the applicable  
28 department-approved driver training course operating pursuant  
29 to s. 318.1451 or DUI program substance abuse education course  
30 and evaluation as provided in s. 316.193(5). Letters of  
31 recommendation from respected business persons in the

1 community, law enforcement officers, or judicial officers may  
2 also be required to determine whether such person should be  
3 permitted to operate a motor vehicle on a restricted basis for  
4 business or employment use only and in determining whether  
5 such person can be trusted to so operate a motor vehicle. If a  
6 driver's license has been suspended under the point system or  
7 pursuant to s. 322.2615, the department shall require proof of  
8 enrollment in the applicable department-approved driver  
9 training course or licensed DUI program substance abuse  
10 education course, including evaluation and treatment, if  
11 referred, and may require letters of recommendation described  
12 in this subsection to determine if the driver should be  
13 reinstated on a restricted basis. If such person fails to  
14 complete the approved course within 90 days after  
15 reinstatement or subsequently fails to complete treatment, if  
16 applicable, the department shall cancel his or her driver's  
17 license until the course and treatment, if applicable, is  
18 successfully completed, notwithstanding the terms of the court  
19 order or any suspension or revocation of the driving  
20 privilege. The department may temporarily reinstate the  
21 driving privilege on a restricted basis upon verification from  
22 the DUI program that the offender has reentered and is  
23 currently participating in treatment and has completed the DUI  
24 education course and evaluation requirement. If the DUI  
25 program notifies the department of the second failure to  
26 complete treatment, the department shall reinstate the driving  
27 privilege only after notice of completion of treatment from  
28 the DUI program. The privilege of driving on a limited or  
29 restricted basis for business or employment use shall not be  
30 granted to a person who has been convicted of a violation of  
31 s. 316.193 until completion of the DUI program substance abuse

1 education course and evaluations as provided in s. 316.193(5).  
 2 Except as provided in paragraph (b), if a person's license has  
 3 been revoked pursuant to s. 322.28 or suspended pursuant to s.  
 4 322.2615, or a person has been convicted of a violation of s.  
 5 316.193 two or more times or has had his or her license  
 6 suspended two or more times for refusal to submit to a test  
 7 pursuant to s. 322.2615 or former s. 322.261, the privilege of  
 8 driving on a limited or restricted basis for business or  
 9 employment use shall be granted in those circumstances where a  
 10 court has required use of an ignition interlock device  
 11 pursuant to s. 316.193(2)(a)~~the privilege of driving on a~~  
 12 ~~limited or restricted basis for business or employment use~~  
 13 ~~shall not be granted to a person whose license is revoked~~  
 14 ~~pursuant to s. 322.28 or suspended pursuant to s. 322.2615 and~~  
 15 ~~who has been convicted of a violation of s. 316.193 two or~~  
 16 ~~more times or whose license has been suspended two or more~~  
 17 ~~times for refusal to submit to a test pursuant to s. 322.2615~~  
 18 ~~or former s. 322.261.~~

19 Section 7. Subsections (2), (3), (4), and (8) of  
 20 section 327.35, Florida Statutes, are amended to read:

21 327.35 Boating under the influence; penalties;  
 22 "designated drivers".--

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

26 1. By a fine of:

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

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

31 c. ~~Not less than \$1,000 or more than \$2,500 for a~~

1 ~~third conviction; and~~

2       2. By imprisonment for:

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

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

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

6       (b) Any person who is convicted of a third ~~fourth or~~

7 ~~subsequent~~ violation of this section is guilty of a felony of

8 the third degree, punishable as provided in s. 775.082, s.

9 775.083, or s. 775.084; however, the fine imposed for such

10 third ~~fourth or subsequent~~ violation may not be less than

11 \$1,000.

12       (c) Any person who is convicted of a fourth or

13 subsequent violation of this section commits a felony of the

14 third degree, punishable as provided for in s. 775.082, s.

15 775.083, or s. 775.084. However, the fine imposed for such a

16 violation shall not be less than \$1,000.

17       (3) Any person:

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

19       (b) Who operates a vessel; and

20       (c) Who, by reason of such operation, causes or

21 contributes to the cause of:

22       1. Damage to the property or person of another commits

23 a misdemeanor of the first degree, punishable as provided in

24 s. 775.082 or s. 775.083.

25       2. Serious bodily injury to another, as defined in s.

26 327.353 ~~316.1933~~, commits a felony of the third degree,

27 punishable as provided in s. 775.082, s. 775.083, or s.

28 775.084.

29       3. The death of any human being commits BUI

30 manslaughter, and commits:

31       a. A felony of the second degree, punishable as

1 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

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

17 (a) By a fine of:

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

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

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

24 (b) By imprisonment for:

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

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

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

28

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



1 or higher.

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

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

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

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

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

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

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

20 3. The person, by reason of operation of a vessel, has  
21 caused death or serious bodily injury as defined in s.  
22 327.353; or

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

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

1 protective custody pursuant to this paragraph, who is  
2 subsequently convicted of a violation of this section, to pay  
3 the reasonable costs of evaluation and treatment.

4 Section 8. Section 327.352, Florida Statutes, is  
5 amended to read:

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

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

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

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

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

31 3. The Alcohol Testing Program within the Department

1 of Law Enforcement is responsible for the regulation of the  
2 operation, inspection, and registration of breath test  
3 instruments utilized under the driving and boating under the  
4 influence provisions and related provisions located in this  
5 chapter and chapters 316 and 322. The program is responsible  
6 for the regulation of the individuals who operate, inspect,  
7 and instruct on the breath test instruments utilized in the  
8 driving and boating under the influence provisions and related  
9 provisions located in this chapter and chapters 316 and 322.  
10 The program is further responsible for the regulation of blood  
11 analysts who conduct blood testing to be utilized under the  
12 driving and boating under the influence provisions and related  
13 provisions located in this chapter and chapters 316 and 322.  
14 The program shall:

- 15 a. Establish uniform criteria for the issuance of  
16 permits to breath test operators, agency inspectors,  
17 instructors, blood analysts, and instruments.
- 18 b. Have the authority to permit breath test operators,  
19 agency inspectors, instructors, blood analysts, and  
20 instruments.
- 21 c. Have the authority to discipline and suspend,  
22 revoke, or renew the permits of breath test operators, agency  
23 inspectors, instructors, blood analysts, and instruments.
- 24 d. Establish uniform requirements for instruction and  
25 curricula for the operation and inspection of approved  
26 instruments.
- 27 e. Have the authority to specify one approved  
28 curriculum for the operation and inspection of approved  
29 instruments.
- 30 f. Establish a procedure for the approval of breath  
31 test operator and agency inspector classes.

1           g. Have the authority to approve or disapprove breath  
2 test instruments and accompanying paraphernalia for use  
3 pursuant to the driving and boating under the influence  
4 provisions and related provisions located in this chapter and  
5 chapters 316 and 322.

6           h. With the approval of the executive director of the  
7 Department of Law Enforcement, make and enter into contracts  
8 and agreements with other agencies, organizations,  
9 associations, corporations, individuals, or federal agencies  
10 as are necessary, expedient, or incidental to the performance  
11 of duties.

12           i. Issue final orders which include findings of fact  
13 and conclusions of law and which constitute final agency  
14 action for the purpose of chapter 120.

15           j. Enforce compliance with the provisions of this  
16 section through civil or administrative proceedings.

17           k. Make recommendations concerning any matter within  
18 the purview of this section, this chapter, chapter 316, or  
19 chapter 322.

20           l. Promulgate rules for the administration and  
21 implementation of this section, including definitions of  
22 terms.

23           m. Consult and cooperate with other entities for the  
24 purpose of implementing the mandates of this section.

25           n. Have the authority to approve the type of blood  
26 test utilized under the driving and boating under the  
27 influence provisions and related provisions located in this  
28 chapter and chapters 316 and 322.

29           o. Have the authority to specify techniques and  
30 methods for breath alcohol testing and blood testing utilized  
31 under the driving and boating under the influence provisions

1 and related provisions located in this chapter and chapters  
2 316 and 322.

3 p. Have the authority to approve repair facilities for  
4 the approved breath test instruments, including the authority  
5 to set criteria for approval.

6  
7 Nothing in this section shall be construed to supersede  
8 provisions in this chapter and chapters 316 and 322. The  
9 specifications in this section are derived from the power and  
10 authority previously and currently possessed by the Department  
11 of Law Enforcement and are enumerated to conform with the  
12 mandates of chapter 99-379, Laws of Florida.

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

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

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

17 (e)1. The tests determining the weight of alcohol in  
18 the defendant's blood or breath shall be administered at the  
19 request of a law enforcement officer substantially in  
20 accordance with rules of the Department of Law Enforcement.  
21 However, the failure of a law enforcement officer to request  
22 the withdrawal of blood does not affect the admissibility of a  
23 test of blood withdrawn for medical purposes.

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

1 request the withdrawal of blood does not affect the  
2 admissibility of a test of blood withdrawn for medical  
3 purposes.

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

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

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



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

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

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

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

25 327.353 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. 327.352 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 vessel operated by a person under the influence of  
2 alcoholic beverages, any chemical substances, or any  
3 controlled substances has caused the death or serious bodily  
4 injury of a human being, ~~the person shall submit, upon the~~  
5 ~~request of~~ a law enforcement officer shall require the person  
6 operating or in actual physical control of the vessel to  
7 submit to a test of the person's blood for the purpose of  
8 determining the alcoholic content thereof or the presence of  
9 chemical substances as set forth in s. 877.111 or any  
10 substance controlled under chapter 893. The law enforcement  
11 officer may use reasonable force if necessary to require the  
12 person to submit to the administration of the blood test. The  
13 blood test shall be performed in a reasonable manner.  
14 Notwithstanding s. 327.352, the testing required by this  
15 paragraph need not be incidental to a lawful arrest of the  
16 person.

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

22 Section 10. Section 327.359, Florida Statutes, is  
23 created to read:

24 327.359 Refusal to submit to testing; penalties.--Any  
25 person who has refused to submit to a chemical or physical  
26 test of his or her breath, blood, or urine, as described in s.  
27 327.352, and:

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

1 substances.

2 (2) Who was placed under lawful arrest for a violation  
3 of s. 327.35, unless such test was requested pursuant to s.  
4 327.352(1)(c).

5 (3) Who was informed that refusal to submit to such  
6 test is a misdemeanor.

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

10

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

13 Section 11. Section 397.6755, Florida Statutes, is  
14 created to read:

15 397.6755 Evidence and criteria for involuntary  
16 admissions and involuntary treatment; funding.--

17 (1) If a court finds that a person arrested for  
18 violation of either s. 316.193 or s. 327.35 has lost the power  
19 of self-control with respect to substance use and is likely to  
20 inflict physical harm upon himself or herself or another  
21 pursuant to the standards set forth in s. 397.675, a court may  
22 require involuntary admission and treatment of such person. In  
23 making such determination, a court shall, along with all  
24 relevant evidence, consider the following factors:

25 (a) Whether the person has, previous to the arrest,  
26 been convicted of a violation of s. 316.193 or s. 327.35;

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

30 (c) Whether the person, by reason of operation of a  
31 motor vehicle or a vessel, has caused or contributed to the

1 death or serious bodily injury of another as defined in s.  
2 316.1933 or s. 327.353; or

3 (d) Whether the person is on pretrial release for a  
4 previous offense under s. 316.193 or s. 327.35.

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

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

20 921.0022 Criminal Punishment Code; offense severity  
21 ranking chart.--

22 (3) OFFENSE SEVERITY RANKING CHART

23  
24 Florida Felony  
25 Statute Degree Description

26  
27  
28 (c) LEVEL 3  
29 316.193(2)(b) 3rd Felony DUI, 3rd conviction.  
30 316.1935(2) 3rd Fleeing or attempting to elude  
31 law enforcement officer in marked

1			patrol vehicle with siren and
2			lights activated.
3	319.30(4)	3rd	Possession by junkyard of motor
4			vehicle with identification
5			number plate removed.
6	319.33(1)(a)	3rd	Alter or forge any certificate of
7			title to a motor vehicle or
8			mobile home.
9	319.33(1)(c)	3rd	Procure or pass title on stolen
10			vehicle.
11	319.33(4)	3rd	With intent to defraud, possess,
12			sell, etc., a blank, forged, or
13			unlawfully obtained title or
14			registration.
15	<u>327.35(2)(b)</u>	<u>3rd</u>	<u>Felony BUI, 3rd conviction.</u>
16	328.05(2)	3rd	Possess, sell, or counterfeit
17			fictitious, stolen, or fraudulent
18			titles or bills of sale of
19			vessels.
20	328.07(4)	3rd	Manufacture, exchange, or possess
21			vessel with counterfeit or wrong
22			ID number.
23	376.302(5)	3rd	Fraud related to reimbursement
24			for cleanup expenses under the
25			Inland Protection Trust Fund.
26	501.001(2)(b)	2nd	Tampers with a consumer product
27			or the container using materially
28			false/misleading information.
29	697.08	3rd	Equity skimming.
30	790.15(3)	3rd	Person directs another to
31			discharge firearm from a vehicle.

1	796.05(1)	3rd	Live on earnings of a prostitute.
2	806.10(1)	3rd	Maliciously injure, destroy, or
3			interfere with vehicles or
4			equipment used in firefighting.
5	806.10(2)	3rd	Interferes with or assaults
6			firefighter in performance of
7			duty.
8	810.09(2)(c)	3rd	Trespass on property other than
9			structure or conveyance armed
10			with firearm or dangerous weapon.
11	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but
12			less than \$10,000.
13	815.04(4)(b)	2nd	Computer offense devised to
14			defraud or obtain property.
15	817.034(4)(a)3.	3rd	Engages in scheme to defraud
16			(Florida Communications Fraud
17			Act), property valued at less
18			than \$20,000.
19	817.233	3rd	Burning to defraud insurer.
20	817.234(8)&(9)	3rd	Unlawful solicitation of persons
21			involved in motor vehicle
22			accidents.
23	817.234(11)(a)	3rd	Insurance fraud; property value
24			less than \$20,000.
25	817.505(4)	3rd	Patient brokering.
26	828.12(2)	3rd	Tortures any animal with intent
27			to inflict intense pain, serious
28			physical injury, or death.
29	831.28(2)(a)	3rd	Counterfeiting a payment
30			instrument with intent to defraud
31			or possessing a counterfeit

1			payment instrument.
2	831.29	2nd	Possession of instruments for
3			counterfeiting drivers' licenses
4			or identification cards.
5	838.021(3)(b)	3rd	Threatens unlawful harm to public
6			servant.
7	843.19	3rd	Injure, disable, or kill police
8			dog or horse.
9	870.01(2)	3rd	Riot; inciting or encouraging.
10	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
11			cannabis (or other s.
12			893.03(1)(c), (2)(c)1., (2)(c)2.,
13			(2)(c)3., (2)(c)5., (2)(c)6.,
14			(2)(c)7., (2)(c)8., (2)(c)9.,
15			(3), or (4) drugs).
16	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s.
17			893.03(1)(c), (2)(c)1., (2)(c)2.,
18			(2)(c)3., (2)(c)5., (2)(c)6.,
19			(2)(c)7., (2)(c)8., (2)(c)9.,
20			(3), or (4) drugs within 200 feet
21			of university or public park.
22	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.
23			893.03(1)(c), (2)(c)1., (2)(c)2.,
24			(2)(c)3., (2)(c)5., (2)(c)6.,
25			(2)(c)7., (2)(c)8., (2)(c)9.,
26			(3), or (4) drugs within 200 feet
27			of public housing facility.
28	893.13(6)(a)	3rd	Possession of any controlled
29			substance other than felony
30			possession of cannabis.
31			

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. \_\_\_\_ (for drafter's use only)

1	893.13(7)(a)9.	3rd	Obtain or attempt to obtain
2			controlled substance by fraud,
3			forgery, misrepresentation, etc.
4	893.13(7)(a)11.	3rd	Furnish false or fraudulent
5			material information on any
6			document or record required by
7			chapter 893.
8	918.13(1)(a)	3rd	Alter, destroy, or conceal
9			investigation evidence.
10	944.47		
11	(1)(a)1.-2.	3rd	Introduce contraband to
12			correctional facility.
13	944.47(1)(c)	2nd	Possess contraband while upon the
14			grounds of a correctional
15			institution.
16	985.3141	3rd	Escapes from a juvenile facility
17			(secure detention or residential
18			commitment facility).
19			(f) LEVEL 6
20	316.027(1)(b)	2nd	Accident involving death, failure
21			to stop; leaving scene.
22	316.193(2)(c) <del>(b)</del>	3rd	Felony DUI, 4th or subsequent
23			conviction.
24	<u>327.35(2)(c)</u>	<u>3rd</u>	<u>Felony BUI, 4th or subsequent</u>
25			<u>conviction.</u>
26	775.0875(1)	3rd	Taking firearm from law
27			enforcement officer.
28	775.21(10)	3rd	Sexual predators; failure to
29			register; failure to renew
30			driver's license or
31			identification card.



795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. \_\_\_\_ (for drafter's use only)

1	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
2			without intent to kill.
3	784.021(1)(b)	3rd	Aggravated assault; intent to
4			commit felony.
5	784.041	3rd	Felony battery.
6	784.048(3)	3rd	Aggravated stalking; credible
7			threat.
8	784.048(5)	3rd	Aggravated stalking of person
9			under 16.
10	784.07(2)(c)	2nd	Aggravated assault on law
11			enforcement officer.
12	784.074(1)(b)	2nd	Aggravated assault on sexually
13			violent predators facility staff.
14	784.08(2)(b)	2nd	Aggravated assault on a person 65
15			years of age or older.
16	784.081(2)	2nd	Aggravated assault on specified
17			official or employee.
18	784.082(2)	2nd	Aggravated assault by detained
19			person on visitor or other
20			detainee.
21	784.083(2)	2nd	Aggravated assault on code
22			inspector.
23	787.02(2)	3rd	False imprisonment; restraining
24			with purpose other than those in
25			s. 787.01.
26	790.115(2)(d)	2nd	Discharging firearm or weapon on
27			school property.
28	790.161(2)	2nd	Make, possess, or throw
29			destructive device with intent to
30			do bodily harm or damage
31			property.

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. \_\_\_\_ (for drafter's use only)

1	790.164(1)	2nd	False report of deadly explosive
2			or act of arson or violence to
3			state property.
4	790.19	2nd	Shooting or throwing deadly
5			missiles into dwellings, vessels,
6			or vehicles.
7	794.011(8)(a)	3rd	Solicitation of minor to
8			participate in sexual activity by
9			custodial adult.
10	794.05(1)	2nd	Unlawful sexual activity with
11			specified minor.
12	800.04(5)(d)	3rd	Lewd or lascivious molestation;
13			victim 12 years of age or older
14			but less than 16 years; offender
15			less than 18 years.
16	800.04(6)(b)	2nd	Lewd or lascivious conduct;
17			offender 18 years of age or
18			older.
19	806.031(2)	2nd	Arson resulting in great bodily
20			harm to firefighter or any other
21			person.
22	810.02(3)(c)	2nd	Burglary of occupied structure;
23			unarmed; no assault or battery.
24	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more,
25			but less than \$100,000, grand
26			theft in 2nd degree.
27	812.014(2)(b)2.	2nd	Property stolen cargo valued at
28			less than \$50,000, grand theft in
29			2nd degree.
30	812.015(9)	2nd	Retail theft; property stolen
31			\$300 or more; second or

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. \_\_\_\_ (for drafter's use only)

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

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. \_\_\_\_ (for drafter's use only)

1	914.23	2nd	Retaliation against a witness,
2			victim, or informant, with bodily
3			injury.
4	943.0435(9)	3rd	Sex offenders; failure to comply
5			with reporting requirements.
6	944.35(3)(a)2.	3rd	Committing malicious battery upon
7			or inflicting cruel or inhuman
8			treatment on an inmate or
9			offender on community
10			supervision, resulting in great
11			bodily harm.
12	944.40	2nd	Escapes.
13	944.46	3rd	Harboring, concealing, aiding
14			escaped prisoners.
15	944.47(1)(a)5.	2nd	Introduction of contraband
16			(firearm, weapon, or explosive)
17			into correctional facility.
18	951.22(1)	3rd	Intoxicating drug, firearm, or
19			weapon introduced into county
20			facility.
21			(i) LEVEL 9
22	316.193		
23	(3)(c)3.b.	1st	DUI manslaughter; failing to
24			render aid or give information.
25	<u>327.35(3)(c)3.b.</u>	<u>1st</u>	<u>BUI manslaughter; failing to</u>
26			<u>render aid or give information.</u>
27	560.123(8)(b)3.	1st	Failure to report currency or
28			payment instruments totaling or
29			exceeding \$100,000 by money
30			transmitter.
31			

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. \_\_\_\_ (for drafter's use only)

1	560.125(5)(c)	1st	Money transmitter business by
2			unauthorized person, currency, or
3			payment instruments totaling or
4			exceeding \$100,000.
5	655.50(10)(b)3.	1st	Failure to report financial
6			transactions totaling or
7			exceeding \$100,000 by financial
8			institution.
9	755.0844	1st	Aggravated white collar crime.
10	782.04(1)	1st	Attempt, conspire, or solicit to
11			commit premeditated murder.
12	782.04(3)	1st,PBL	Accomplice to murder in
13			connection with arson, sexual
14			battery, robbery, burglary, and
15			other specified felonies.
16	782.051(1)	1st	Attempted felony murder while
17			perpetrating or attempting to
18			perpetrate a felony enumerated in
19			s. 782.04(3).
20	782.07(2)	1st	Aggravated manslaughter of an
21			elderly person or disabled adult.
22	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
23			reward or as a shield or hostage.
24	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
25			or facilitate commission of any
26			felony.
27	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
28			interfere with performance of any
29			governmental or political
30			function.
31			

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. \_\_\_\_ (for drafter's use only)

1	787.02(3)(a)	1st	False imprisonment; child under
2			age 13; perpetrator also commits
3			aggravated child abuse, sexual
4			battery, or lewd or lascivious
5			battery, molestation, conduct, or
6			exhibition.
7	790.161	1st	Attempted capital destructive
8			device offense.
9	790.166(2)	1st,PBL	Possessing, selling, using, or
10			attempting to use a weapon of
11			mass destruction.
12	794.011(2)	1st	Attempted sexual battery; victim
13			less than 12 years of age.
14	794.011(2)	Life	Sexual battery; offender younger
15			than 18 years and commits sexual
16			battery on a person less than 12
17			years.
18	794.011(4)	1st	Sexual battery; victim 12 years
19			or older, certain circumstances.
20	794.011(8)(b)	1st	Sexual battery; engage in sexual
21			conduct with minor 12 to 18 years
22			by person in familial or
23			custodial authority.
24	800.04(5)(b)	1st	Lewd or lascivious molestation;
25			victim less than 12 years;
26			offender 18 years or older.
27	812.13(2)(a)	1st,PBL	Robbery with firearm or other
28			deadly weapon.
29	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
30			deadly weapon.
31	827.03(2)	1st	Aggravated child abuse.

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

- 1 893.135
- 2 (1)(f)1.c. 1st Trafficking in amphetamine, more
- 3 than 200 grams.
- 4 893.135
- 5 (1)(h)1.c. 1st Trafficking in
- 6 gamma-hydroxybutyric acid (GHB),
- 7 10 kilograms or more.
- 8 893.135
- 9 (1)(i)1.c. 1st Trafficking in 1,4-Butanediol, 10
- 10 kilograms or more.
- 11 893.135
- 12 (1)(j)2.c. 1st Trafficking in Phenethylamines,
- 13 400 grams or more.
- 14 896.101(5)(c) 1st Money laundering, financial
- 15 instruments totaling or exceeding
- 16 \$100,000.
- 17 896.104(4)(a)3. 1st Structuring transactions to evade
- 18 reporting or registration
- 19 requirements, financial
- 20 transactions totaling or
- 21 exceeding \$100,000.

22 Section 13. Section 938.07, Florida Statutes, is  
 23 amended to read:  
 24 938.07 Driving or boating under the  
 25 influence.--Notwithstanding any other provision of s. 316.193  
 26 or s. 327.35, a court cost of \$135 shall be added to any fine  
 27 imposed pursuant to s. 316.193 or s. 327.35. The clerks shall  
 28 remit the funds to the Department of Revenue, \$25 of which  
 29 shall be deposited in the Emergency Medical Services Trust  
 30 Fund, \$50 shall be deposited in the Criminal Justice Standards  
 31 and Training Trust Fund of the Department of Law Enforcement



1 to be used for operational expenses in conducting the  
 2 statewide criminal analysis laboratory system established in  
 3 s. 943.32, and \$60 shall be deposited in the Brain and Spinal  
 4 Cord Injury Rehabilitation Trust Fund created in s. 381.79.

5 Section 14. This act shall take effect July 1, 2002.

6  
 7

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

9 And the title is amended as follows:

10 remove: the entire title

11

12 and insert:

13 A bill to be entitled  
 14 An act relating to driving or boating under the  
 15 influence of alcohol or controlled substances;  
 16 amending s. 316.193, F.S.; revising language  
 17 with respect to convictions for a felony DUI;  
 18 requiring mandatory placement of an ignition  
 19 interlock device under certain circumstances;  
 20 amending conditions for conviction in cases of  
 21 accident, serious bodily injury, or death;  
 22 removing a cross reference; allowing a law  
 23 enforcement officer to place a person in  
 24 protective custody under certain circumstances;  
 25 requiring a person placed in protective custody  
 26 to pay reasonable costs of evaluation and  
 27 treatment under certain circumstances; amending  
 28 s. 316.1932, F.S.; requiring a law enforcement  
 29 officer to inform a person that refusal to  
 30 submit to certain tests is a misdemeanor;  
 31 amending s. 316.1933, F.S.; requiring a person

1 to submit to a blood test under certain  
2 circumstances; providing that the test need not  
3 be incidental to a lawful arrest; amending s.  
4 316.1937, F.S.; requiring the installation of  
5 ignition interlock devices in conformance to  
6 the act; eliminating reference to probation and  
7 probationers; requiring notification to the  
8 department with respect to ignition interlock  
9 devices; creating s. 316.1939, F.S.; providing  
10 a penalty for refusing to submit to a chemical  
11 or physical test of breath, urine, or blood;  
12 providing application; amending s. 322.271,  
13 F.S.; providing an exception to the prohibition  
14 on a limited right to drive for business or  
15 employment for certain persons for whom the  
16 court has required the use of an ignition  
17 interlock device; amending s. 327.35, F.S.;  
18 revising language with respect to convictions  
19 required for a felony BUI; amending conditions  
20 for conviction in cases of accident, serious  
21 bodily injury, or death; correcting cross  
22 references; allowing a law enforcement officer  
23 to place a person in protective custody under  
24 certain circumstances; requiring a person  
25 placed in protective custody to pay reasonable  
26 costs of evaluation and treatment under certain  
27 circumstances; amending s. 327.352, F.S.;  
28 requiring a law enforcement officer to inform a  
29 person that refusal to submit to certain tests  
30 is a misdemeanor; amending s. 327.353, F.S.;  
31 requiring a person to submit to a blood test

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

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