

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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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 2 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).

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

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. ____ (for drafter's use only)

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

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. ____ (for drafter's use only)

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)~~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) (b)	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			

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.

795-117AXE-06

Bill No. CS/CS/HB 1057

Amendment No. ____ (for drafter's use only)

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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