

795-117AXF-06

Bill No. CS/CS/HB 1057, 1st Eng.

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

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

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Representative(s) Simmons offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause

and insert:

Section 1. Subsections (2), (3), and (4) of section 316.193, Florida Statutes, are amended, and subsection (11) is added to said section, to read:

316.193 Driving under the influence; penalties.--

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

1. By a fine of:

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

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

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

2. By imprisonment for:

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1           a. Not more than 6 months for a first conviction.  
2           b. Not more than 9 months for a second conviction.  
3           ~~c. Not more than 12 months for a third conviction.~~  
4           3. For a second conviction, by mandatory placement for  
5 a period of at least 1 year, at the convicted person's sole  
6 expense, of an ignition interlock device approved by the  
7 department in accordance with s. 316.1937 upon all vehicles  
8 that are individually or jointly leased or owned and routinely  
9 operated by the convicted person. The installation of such  
10 device may not occur before July 1, 2003.

11           (b)1. Any person who is convicted of a third ~~fourth or~~  
12 ~~subsequent~~ violation of this section for an offense that  
13 occurs within 10 years after a prior conviction for a  
14 violation of this section commits is guilty of a felony of the  
15 third degree, punishable as provided in s. 775.082, s.  
16 775.083, or s. 775.084. In addition, the court shall order the  
17 mandatory placement for a period of not less than 2 years, at  
18 the convicted person's sole expense, of an ignition interlock  
19 device approved by the department in accordance with s.  
20 316.1937 upon all vehicles that are individually or jointly  
21 leased or owned and routinely operated by the convicted  
22 person. The installation of such device may not occur before  
23 July 1, 2003.

24           2. Any person who is convicted of a third violation of  
25 this section for an offense that occurs more than 10 years  
26 after the date of a prior conviction for a violation of this  
27 section shall be punished by a fine of not less than \$1,000 or  
28 more than \$2,500 and by imprisonment for not more than 12  
29 months. In addition, the court shall order the mandatory  
30 placement for a period of at least 2 years, at the convicted  
31 person's sole expense, of an ignition interlock device

1 approved by the department in accordance with s. 316.1937 upon  
2 all vehicles that are individually or jointly leased or owned  
3 and routinely operated by the convicted person. The  
4 installation of such device may not occur before July 1, 2003.

5 3. Any person who is convicted of a fourth or  
6 subsequent violation of this section, regardless of when any  
7 prior conviction for a violation of this section occurred,  
8 commits a felony of the third degree, punishable as provided  
9 in s. 775.082, s. 775.083, or s. 775.084. However, the fine  
10 imposed for such fourth or subsequent violation may be not  
11 less than \$1,000.

12 (3) Any person:

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

14 (b) Who operates a vehicle; and

15 (c) Who, by reason of such operation, causes or  
16 contributes to causing:

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

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

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

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

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

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

31 (II) The person failed to give information and render

1 aid as required by s. 316.062.

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

8 (a) By a fine of:

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

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

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

15 (b) By imprisonment for:

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

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

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

19

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

24 (c) In addition to the penalties in paragraphs (a) and  
25 (b), the court shall order the mandatory placement, at the  
26 convicted person's sole expense, of an ignition interlock  
27 device approved by the department in accordance with s.  
28 316.1937 upon all vehicles that are individually or jointly  
29 leased or owned and routinely operated by the convicted person  
30 for up to 6 months for the first offense and for at least 2  
31 years for a second offense. The installation of such device

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1 may not occur before July 1, 2003.

2 (11) The Department of Highway Safety and Motor  
3 Vehicles is directed to adopt rules providing for the  
4 implementation of the use of ignition interlock devices.

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

7 316.1932 Breath, blood, and urine tests for alcohol,  
8 chemical substances, or controlled substances; implied  
9 consent; refusal ~~right to refuse~~--

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

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

27           2. The Alcohol Testing Program within the Department  
28 of Law Enforcement is responsible for the regulation of the  
29 operation, inspection, and registration of breath test  
30 instruments utilized under the driving and boating under the  
31 influence provisions and related provisions located in this

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

1 chapters 322 and 327.

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

8 i. Issue final orders which include findings of fact  
9 and conclusions of law and which constitute final agency  
10 action for the purpose of chapter 120.

11 j. Enforce compliance with the provisions of this  
12 section through civil or administrative proceedings.

13 k. Make recommendations concerning any matter within  
14 the purview of this section, this chapter, chapter 322, or  
15 chapter 327.

16 l. Promulgate rules for the administration and  
17 implementation of this section, including definitions of  
18 terms.

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

21 n. Have the authority to approve the type of blood  
22 test utilized under the driving and boating under the  
23 influence provisions and related provisions located in this  
24 chapter and chapters 322 and 327.

25 o. Have the authority to specify techniques and  
26 methods for breath alcohol testing and blood testing utilized  
27 under the driving and boating under the influence provisions  
28 and related provisions located in this chapter and chapters  
29 322 and 327.

30 p. Have the authority to approve repair facilities for  
31 the approved breath test instruments, including the authority



1 to set criteria for approval.

2

3 Nothing in this section shall be construed to supersede  
4 provisions in this chapter and chapters 322 and 327. The  
5 specifications in this section are derived from the power and  
6 authority previously and currently possessed by the Department  
7 of Law Enforcement and are enumerated to conform with the  
8 mandates of chapter 99-379, Laws of Florida.

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

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

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

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

30 (d) If the arresting officer does not request a  
31 chemical or physical breath test of the person arrested for

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1 any offense allegedly committed while the person was driving  
2 or was in actual physical control of a motor vehicle while  
3 under the influence of alcoholic beverages or controlled  
4 substances, such person may request the arresting officer to  
5 have a chemical or physical test made of the arrested person's  
6 breath or a test of the urine or blood for the purpose of  
7 determining the alcoholic content of the person's blood or  
8 breath or the presence of chemical substances or controlled  
9 substances; and, if so requested, the arresting officer shall  
10 have the test performed.

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

15 2. A nonresident or any other person driving in a  
16 status exempt from the requirements of the driver's license  
17 law, by his or her act of driving in such exempt status, is  
18 deemed to have expressed his or her consent to the provisions  
19 of this section.

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

23 (f)1. The tests determining the weight of alcohol in  
24 the defendant's blood or breath shall be administered at the  
25 request of a law enforcement officer substantially in  
26 accordance with rules of the Department of Law Enforcement.  
27 Such rules must specify precisely the test or tests that are  
28 approved by the Department of Law Enforcement for reliability  
29 of result and ease of administration, and must provide an  
30 approved method of administration which must be followed in  
31 all such tests given under this section. However, the failure

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

4           2.a. Only a physician, certified paramedic, registered  
5 nurse, licensed practical nurse, other personnel authorized by  
6 a hospital to draw blood, or duly licensed clinical laboratory  
7 director, supervisor, technologist, or technician, acting at  
8 the request of a law enforcement officer, may withdraw blood  
9 for the purpose of determining its alcoholic content or the  
10 presence of chemical substances or controlled substances  
11 therein. However, the failure of a law enforcement officer to  
12 request the withdrawal of blood does not affect the  
13 admissibility of a test of blood withdrawn for medical  
14 purposes.

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

30           c. The notice shall consist only of the name of the  
31 person being treated, the name of the person who drew the

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1 blood, the blood-alcohol level indicated by the test, and the  
2 date and time of the administration of the test.

3 d. Nothing contained in s. 395.3025(4), s. 456.057, or  
4 any applicable practice act affects the authority to provide  
5 notice under this section, and the health care provider is not  
6 considered to have breached any duty owed to the person under  
7 s. 395.3025(4), s. 456.057, or any applicable practice act by  
8 providing notice or failing to provide notice. It shall not be  
9 a breach of any ethical, moral, or legal duty for a health  
10 care provider to provide notice or fail to provide notice.

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

23 3. The person tested may, at his or her own expense,  
24 have a physician, registered nurse, other personnel authorized  
25 by a hospital to draw blood, or duly licensed clinical  
26 laboratory director, supervisor, technologist, or technician,  
27 or other person of his or her own choosing administer an  
28 independent test in addition to the test administered at the  
29 direction of the law enforcement officer for the purpose of  
30 determining the amount of alcohol in the person's blood or  
31 breath or the presence of chemical substances or controlled

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1 substances at the time alleged, as shown by chemical analysis  
2 of his or her blood or urine, or by chemical or physical test  
3 of his or her breath. The failure or inability to obtain an  
4 independent test by a person does not preclude the  
5 admissibility in evidence of the test taken at the direction  
6 of the law enforcement officer. The law enforcement officer  
7 shall not interfere with the person's opportunity to obtain  
8 the independent test and shall provide the person with timely  
9 telephone access to secure the test, but the burden is on the  
10 person to arrange and secure the test at the person's own  
11 expense.

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

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

28           (2) The results of any test administered pursuant to  
29 this section for the purpose of detecting the presence of any  
30 controlled substance shall not be admissible as evidence in a  
31 criminal prosecution for the possession of a controlled

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1 substance.

2 (3) Notwithstanding any provision of law pertaining to  
3 the confidentiality of hospital records or other medical  
4 records, information relating to the alcoholic content of the  
5 blood or breath or the presence of chemical substances or  
6 controlled substances in the blood obtained pursuant to this  
7 section shall be released to a court, prosecuting attorney,  
8 defense attorney, or law enforcement officer in connection  
9 with an alleged violation of s. 316.193 upon request for such  
10 information.

11 Section 3. Subsection (1) of section 316.1933, Florida  
12 Statutes, is amended to read:

13 316.1933 Blood test for impairment or intoxication in  
14 cases of death or serious bodily injury; right to use  
15 reasonable force.--

16 (1)(a) ~~Notwithstanding any recognized ability to~~  
17 ~~refuse to submit to the tests provided in s. 316.1932 or any~~  
18 ~~recognized power to revoke the implied consent to such tests,~~  
19 If a law enforcement officer has probable cause to believe  
20 that a motor vehicle driven by or in the actual physical  
21 control of a person under the influence of alcoholic  
22 beverages, any chemical substances, or any controlled  
23 substances has caused the death or serious bodily injury of a  
24 human being, ~~such person shall submit, upon the request of a~~  
25 law enforcement officer shall require the person driving or in  
26 actual physical control of the motor vehicle to submit, to a  
27 test of the person's blood for the purpose of determining the  
28 alcoholic content thereof or the presence of chemical  
29 substances as set forth in s. 877.111 or any substance  
30 controlled under chapter 893. The law enforcement officer may  
31 use reasonable force if necessary to require such person to

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1 submit to the administration of the blood test. The blood  
2 test shall be performed in a reasonable manner.

3 Notwithstanding s. 316.1932, the testing required by this  
4 paragraph need not be incidental to a lawful arrest of the  
5 person.

6 (b) The term "serious bodily injury" means an injury  
7 to any person, including the driver, which consists of a  
8 physical condition that creates a substantial risk of death,  
9 serious personal disfigurement, or protracted loss or  
10 impairment of the function of any bodily member or organ.

11 Section 4. Section 316.1937, Florida Statutes, is  
12 amended to read:

13 316.1937 Ignition interlock devices, requiring;  
14 unlawful acts.--

15 (1) In addition to any other authorized penalties, the  
16 court may require that any person who is convicted of driving  
17 under the influence in violation of s. 316.193, ~~and who is~~  
18 ~~granted probation,~~ shall not operate a motor vehicle ~~during~~  
19 ~~the period of probation~~ unless that vehicle is equipped with a  
20 functioning ignition interlock device certified by the  
21 department as provided in s. 316.1938, and installed in such a  
22 manner that the vehicle will not start if the operator's blood  
23 alcohol level is in excess of 0.05 percent or as otherwise  
24 specified by the court. The court may require the use of an  
25 approved ignition interlock device for a ~~the~~ period of  
26 ~~probation, said period to be for~~ not less than 6 months, if  
27 the person is permitted to operate a motor vehicle, whether or  
28 not the privilege to operate a motor vehicle is restricted ~~or~~  
29 ~~not~~, as determined by the court. The court, however, shall  
30 order placement of an ignition interlock device in those  
31 circumstances required by s. 316.193.



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

3           (a) Stipulate on the record the requirement for, and  
4 the period of, the use of a certified ignition interlock  
5 device.

6           (b) Order that the records of the department reflect  
7 such requirement.

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

11           (d) Determine the person's ~~probationer's~~ ability to  
12 pay for installation of the device if the person ~~probationer~~  
13 claims inability to pay. If the court determines that the  
14 person ~~probationer~~ is unable to pay for installation of the  
15 device, the court may order that any portion of a fine paid by  
16 the person ~~probationer~~ for a violation of s. 316.193 shall be  
17 allocated to defray the costs of installing the device.

18           (e) Require proof of installation of the device and  
19 periodic reporting to the department ~~probation officer~~ for  
20 verification of the operation of the device in the person's  
21 ~~probationer's~~ vehicle.

22           (3) If the court imposes the use of an ignition  
23 interlock device ~~as a term of probation~~ on a person whose  
24 driving privilege is not suspended or revoked, the court shall  
25 require the person to provide proof of compliance to the  
26 department ~~probation officer~~ within 30 days. If the person  
27 fails to provide proof of installation within that period,  
28 absent a finding by the court of good cause for that failure  
29 which is entered in the court record, the court shall notify  
30 the department ~~revoke or terminate the person's probation~~.

31           (4) If the court imposes the use of an ignition

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1 interlock device ~~as a term of probation~~ on a person whose  
2 driving privilege is suspended or revoked for a period of less  
3 than 3 years, the department shall require proof of compliance  
4 before reinstatement of the person's driving privilege.

5 (5)(a) In addition to any other provision of law, upon  
6 conviction of a violation of this section the department shall  
7 revoke the person's driving privilege for 1 year from the date  
8 of conviction. Upon conviction of a separate violation of  
9 this section during the same period of required use of an  
10 ignition interlock device, the department shall revoke the  
11 person's driving privilege for 5 years from the date of  
12 conviction.

13 (b) Any person convicted of a violation of subsection  
14 (6) who does not have a driver's license shall, in addition to  
15 any other penalty provided by law, pay a fine of not less than  
16 \$250 or more than \$500 per each such violation. In the event  
17 that the person is unable to pay any such fine, the fine shall  
18 become a lien against the motor vehicle used in violation of  
19 subsection (6) and payment shall be made pursuant to s.  
20 316.3025(4).

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

23 (b) It is unlawful for any person whose driving  
24 privilege is restricted pursuant to this section to request or  
25 solicit any other person to blow into an ignition interlock  
26 device or to start a motor vehicle equipped with the device  
27 for the purpose of providing the person so restricted with an  
28 operable motor vehicle.

29 (c) It is unlawful to blow into an ignition interlock  
30 device or to start a motor vehicle equipped with the device  
31 for the purpose of providing an operable motor vehicle to a

1 person whose driving privilege is restricted pursuant to this  
2 section.

3 (d) It is unlawful to knowingly lease or lend a motor  
4 vehicle to a person who has had his or her driving privilege  
5 restricted ~~under a condition of probation~~ as provided in this  
6 section, unless the vehicle is equipped with a functioning,  
7 certified ignition interlock device. Any person whose driving  
8 privilege is restricted under a condition of probation  
9 requiring an ignition interlock device shall notify any other  
10 person who leases or loans a motor vehicle to him or her of  
11 such driving restriction.

12 (7) Notwithstanding the provisions of this section, if  
13 a person is required to operate a motor vehicle in the course  
14 and scope of his or her employment and if the vehicle is owned  
15 by the employer, the person may operate that vehicle without  
16 installation of an approved ignition interlock device if the  
17 employer has been notified of such driving privilege  
18 restriction and if proof of that notification is with the  
19 vehicle. This employment exemption does not apply, however,  
20 if the business entity which owns the vehicle is owned or  
21 controlled by the person whose driving privilege has been  
22 restricted.

23 (8) In addition to the penalties provided in this  
24 section, a violation of this section is a noncriminal traffic  
25 infraction, punishable as a nonmoving violation as provided in  
26 chapter 318.

27 Section 5. Section 316.1939, Florida Statutes, is  
28 created to read:

29 316.1939 Refusal to submit to testing; penalties.--

30 (1) Any person who has refused to submit to a chemical  
31 or physical test of his or her breath, blood, or urine, as

1 described in s. 316.1932, and whose driving privilege is  
2 currently suspended for a prior refusal to submit to a lawful  
3 test of his or her breath, urine, or blood, and:

4 (a) Who the arresting law enforcement officer had  
5 probable cause to believe was driving or in actual physical  
6 control of a motor vehicle in this state while under the  
7 influence of alcoholic beverages, chemical substances, or  
8 controlled substances;

9 (b) Who was placed under lawful arrest for a violation  
10 of s. 316.193;

11 (c) Who was informed that, if he or she refused to  
12 submit to such test, his or her privilege to operate a motor  
13 vehicle would be suspended for a period of 1 year or, in the  
14 case of a second or subsequent refusal, for a period of 18  
15 months;

16 (d) Who was informed that a refusal to submit to a  
17 lawful test of his or her breath, urine, or blood, if his or  
18 her driving privilege has been previously suspended for a  
19 prior refusal to submit to a lawful test of his or her breath,  
20 urine, or blood, is a misdemeanor; and

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

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

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

30 (3) The disposition of a criminal action under this  
31 section does not affect any administrative proceeding that

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1 relates to the suspension of a person's driving privilege. The  
2 department's records showing that a person's license has been  
3 previously suspended for a prior refusal to submit to a lawful  
4 test of his or her breath, urine, or blood shall be admissible  
5 and shall create a rebuttable presumption of such suspension.

6 Section 6. Paragraph (a) of subsection (2) of section  
7 322.271, Florida Statutes, is amended to read:

8 322.271 Authority to modify revocation, cancellation,  
9 or suspension order.--

10 (2)(a) Upon such hearing, the person whose license has  
11 been suspended, canceled, or revoked may show that such  
12 suspension, cancellation, or revocation of his or her license  
13 causes a serious hardship and precludes the person's carrying  
14 out his or her normal business occupation, trade, or  
15 employment and that the use of the person's license in the  
16 normal course of his or her business is necessary to the  
17 proper support of the person or his or her family. Except as  
18 otherwise provided in this subsection, the department shall  
19 require proof of the successful completion of the applicable  
20 department-approved driver training course operating pursuant  
21 to s. 318.1451 or DUI program substance abuse education course  
22 and evaluation as provided in s. 316.193(5). Letters of  
23 recommendation from respected business persons in the  
24 community, law enforcement officers, or judicial officers may  
25 also be required to determine whether such person should be  
26 permitted to operate a motor vehicle on a restricted basis for  
27 business or employment use only and in determining whether  
28 such person can be trusted to so operate a motor vehicle. If a  
29 driver's license has been suspended under the point system or  
30 pursuant to s. 322.2615, the department shall require proof of  
31 enrollment in the applicable department-approved driver

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1 training course or licensed DUI program substance abuse  
2 education course, including evaluation and treatment, if  
3 referred, and may require letters of recommendation described  
4 in this subsection to determine if the driver should be  
5 reinstated on a restricted basis. If such person fails to  
6 complete the approved course within 90 days after  
7 reinstatement or subsequently fails to complete treatment, if  
8 applicable, the department shall cancel his or her driver's  
9 license until the course and treatment, if applicable, is  
10 successfully completed, notwithstanding the terms of the court  
11 order or any suspension or revocation of the driving  
12 privilege. The department may temporarily reinstate the  
13 driving privilege on a restricted basis upon verification from  
14 the DUI program that the offender has reentered and is  
15 currently participating in treatment and has completed the DUI  
16 education course and evaluation requirement. If the DUI  
17 program notifies the department of the second failure to  
18 complete treatment, the department shall reinstate the driving  
19 privilege only after notice of completion of treatment from  
20 the DUI program. The privilege of driving on a limited or  
21 restricted basis for business or employment use shall not be  
22 granted to a person who has been convicted of a violation of  
23 s. 316.193 until completion of the DUI program substance abuse  
24 education course and evaluations as provided in s. 316.193(5).  
25 Except as provided in paragraph (b), if a person's license has  
26 been revoked pursuant to s. 322.28 or suspended pursuant to s.  
27 322.2615, or a person has been convicted of a violation of s.  
28 316.193 two or more times or has had his or her license  
29 suspended two or more times for refusal to submit to a test  
30 pursuant to s. 322.2615 or former s. 322.261, the privilege of  
31 driving on a limited or restricted basis for business or

1 employment use shall be granted in those circumstances where a  
2 court has required use of an ignition interlock device  
3 pursuant to s. 316.193(2)(a)~~the privilege of driving on a~~  
4 ~~limited or restricted basis for business or employment use~~  
5 ~~shall not be granted to a person whose license is revoked~~  
6 ~~pursuant to s. 322.28 or suspended pursuant to s. 322.2615 and~~  
7 ~~who has been convicted of a violation of s. 316.193 two or~~  
8 ~~more times or whose license has been suspended two or more~~  
9 ~~times for refusal to submit to a test pursuant to s. 322.2615~~  
10 ~~or former s. 322.261.~~

11 Section 7. Subsections (2), (3), and (4) of section  
12 327.35, Florida Statutes, are amended to read:

13 327.35 Boating under the influence; penalties;  
14 "designated drivers".--

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

18 1. By a fine of:

19 a. Not less than \$250 or more than \$500 for a first  
20 conviction.

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

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

25 2. By imprisonment for:

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

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

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

29 (b)1. Any person who is convicted of a third ~~fourth or~~  
30 ~~subsequent~~ violation of this section for an offense that  
31 occurs within 10 years after a prior conviction for a

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1 violation of this section commits is guilty of a felony of the  
2 third degree, punishable as provided in s. 775.082, s.  
3 775.083, or s. 775.084.

4 2. Any person who is convicted of a third violation of  
5 this section for an offense that occurs more than 10 years  
6 after the date of a prior conviction for a violation of this  
7 section shall be punished by a fine of not less than \$1,000 or  
8 more than \$2,500 and by imprisonment for not more than 12  
9 months.

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

15  
16 However, the fine imposed for such fourth or subsequent  
17 violation may not be less than \$1,000.

18 (3) Any person:

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

20 (b) Who operates a vessel; and

21 (c) Who, by reason of such operation, causes or  
22 contributes to causing:

23 1. Damage to the property or person of another commits  
24 a misdemeanor of the first degree, punishable as provided in  
25 s. 775.082 or s. 775.083.

26 2. Serious bodily injury to another, as defined in s.  
27 327.353 ~~316.1933~~, commits a felony of the third degree,  
28 punishable as provided in s. 775.082, s. 775.083, or s.  
29 775.084.

30 3. The death of any human being commits BUI  
31 manslaughter, and commits:



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

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

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

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

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

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 vessel by a person under  
17 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, only the instant offense  
31 is required to be a violation of subsection (1) by a person

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1 who has a blood-alcohol level or breath-alcohol level of 0.20  
2 or higher.

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

5 327.352 Breath, blood, and urine tests for alcohol,  
6 chemical substances, or controlled substances; implied  
7 consent; refusal ~~right to refuse~~.--

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

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

23 (b)1. The blood-alcohol level must be based upon grams  
24 of alcohol per 100 milliliters of blood. The breath-alcohol  
25 level must be based upon grams of alcohol per 210 liters of  
26 breath.

27 2. An analysis of a person's breath, in order to be  
28 considered valid under this section, must have been performed  
29 substantially according to methods approved by the Department  
30 of Law Enforcement. Any insubstantial differences between  
31 approved techniques and actual testing procedures in any

1 individual case do not render the test or test results  
2 invalid.

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

18           a. Establish uniform criteria for the issuance of  
19 permits to breath test operators, agency inspectors,  
20 instructors, blood analysts, and instruments.

21           b. Have the authority to permit breath test operators,  
22 agency inspectors, instructors, blood analysts, and  
23 instruments.

24           c. Have the authority to discipline and suspend,  
25 revoke, or renew the permits of breath test operators, agency  
26 inspectors, instructors, blood analysts, and instruments.

27           d. Establish uniform requirements for instruction and  
28 curricula for the operation and inspection of approved  
29 instruments.

30           e. Have the authority to specify one approved  
31 curriculum for the operation and inspection of approved

1 instruments.

2 f. Establish a procedure for the approval of breath  
3 test operator and agency inspector classes.

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

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

15 i. Issue final orders which include findings of fact  
16 and conclusions of law and which constitute final agency  
17 action for the purpose of chapter 120.

18 j. Enforce compliance with the provisions of this  
19 section through civil or administrative proceedings.

20 k. Make recommendations concerning any matter within  
21 the purview of this section, this chapter, chapter 316, or  
22 chapter 322.

23 l. Promulgate rules for the administration and  
24 implementation of this section, including definitions of  
25 terms.

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

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

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1           o. Have the authority to specify techniques and  
2 methods for breath alcohol testing and blood testing utilized  
3 under the driving and boating under the influence provisions  
4 and related provisions located in this chapter and chapters  
5 316 and 322.

6           p. Have the authority to approve repair facilities for  
7 the approved breath test instruments, including the authority  
8 to set criteria for approval.

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

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

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1 refusal by reason of unconsciousness or other mental or  
2 physical condition is deemed not to have withdrawn his or her  
3 consent to such test. Any person who is capable of refusal  
4 shall be told that his or her failure to submit to such a  
5 blood test will result in a civil penalty of \$500 and that a  
6 refusal to submit to a lawful test of his or her blood, if he  
7 or she has previously been fined for refusal to submit to any  
8 lawful test of his or her breath, urine, or blood, is a  
9 misdemeanor. The refusal to submit to a blood test upon the  
10 request of a law enforcement officer shall be admissible in  
11 evidence in any criminal proceeding.

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

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

30 2. Only a physician, certified paramedic, registered  
31 nurse, licensed practical nurse, other personnel authorized by

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1 a hospital to draw blood, or duly licensed clinical laboratory  
2 director, supervisor, technologist, or technician, acting at  
3 the request of a law enforcement officer, may withdraw blood  
4 for the purpose of determining its alcoholic content or the  
5 presence of chemical substances or controlled substances  
6 therein. However, the failure of a law enforcement officer to  
7 request the withdrawal of blood does not affect the  
8 admissibility of a test of blood withdrawn for medical  
9 purposes.

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

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



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

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

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

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

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

31           327.353 Blood test for impairment or intoxication in

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1 cases of death or serious bodily injury; right to use  
2 reasonable force.--

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

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

28       Section 10. Section 327.359, Florida Statutes, is  
29 created to read:

30       327.359 Refusal to submit to testing; penalties.--Any  
31 person who has refused to submit to a chemical or physical

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1 test of his or her breath, blood, or urine, as described in s.  
2 327.352, and who has been previously fined for refusal to  
3 submit to a lawful test of his or her breath, urine, or blood,  
4 and:

5 (1) Who the arresting law enforcement officer had  
6 probable cause to believe was operating or in actual physical  
7 control of a vessel in this state while under the influence of  
8 alcoholic beverages, chemical substances, or controlled  
9 substances;

10 (2) Who was placed under lawful arrest for a violation  
11 of s. 327.35;

12 (3) Who was informed that if he or she refused to  
13 submit to such test he or she is subject to a fine of \$500;

14 (4) Who was informed that a refusal to submit to a  
15 lawful test of his or her breath, urine, or blood, if he or  
16 she has been previously fined for refusal to submit to a  
17 lawful test of his or her breath, urine, or blood, is a  
18 misdemeanor; and

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

22  
23 commits a misdemeanor of the first degree and is subject to  
24 punishment as provided in s. 775.082 or s. 775.083.

25 Section 11. Section 397.6755, Florida Statutes, is  
26 created to read:

27 397.6755 Evidence and criteria for involuntary  
28 admissions and involuntary treatment; funding.--

29 (1) If a court finds that a person arrested for  
30 violation of either s. 316.193 or s. 327.35 has lost the power  
31 of self-control with respect to substance use and is likely to

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1 inflict physical harm upon himself or herself or another  
2 pursuant to the standards set forth in s. 397.675, a court may  
3 require involuntary admission and treatment of such person. In  
4 making such determination, a court shall, along with all  
5 relevant evidence, consider the following factors:

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

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

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

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

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

29 Section 12. Paragraphs (c) and (i) of subsection (3)  
30 of section 921.0022, Florida Statutes, as amended by chapter  
31 2001-358, Laws of Florida, are amended to read:

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1	921.0022	Criminal Punishment Code; offense severity
2	ranking chart.--	
3	(3)	OFFENSE SEVERITY RANKING CHART
4		
5	Florida	Felony
6	Statute	Degree Description
7		
8		(c) LEVEL 3
9	<u>316.193(2)(b)</u>	<u>3rd Felony DUI, 3rd conviction.</u>
10	316.1935(2)	3rd Fleeing or attempting to elude
11		law enforcement officer in marked
12		patrol vehicle with siren and
13		lights activated.
14	319.30(4)	3rd Possession by junkyard of motor
15		vehicle with identification
16		number plate removed.
17	319.33(1)(a)	3rd Alter or forge any certificate of
18		title to a motor vehicle or
19		mobile home.
20	319.33(1)(c)	3rd Procure or pass title on stolen
21		vehicle.
22	319.33(4)	3rd With intent to defraud, possess,
23		sell, etc., a blank, forged, or
24		unlawfully obtained title or
25		registration.
26	<u>327.35(2)(b)</u>	<u>3rd Felony BUI, 3rd conviction.</u>
27	328.05(2)	3rd Possess, sell, or counterfeit
28		fictitious, stolen, or fraudulent
29		titles or bills of sale of
30		vessels.
31		

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1	328.07(4)	3rd	Manufacture, exchange, or possess
2			vessel with counterfeit or wrong
3			ID number.
4	376.302(5)	3rd	Fraud related to reimbursement
5			for cleanup expenses under the
6			Inland Protection Trust Fund.
7	501.001(2)(b)	2nd	Tampers with a consumer product
8			or the container using materially
9			false/misleading information.
10	697.08	3rd	Equity skimming.
11	790.15(3)	3rd	Person directs another to
12			discharge firearm from a vehicle.
13	796.05(1)	3rd	Live on earnings of a prostitute.
14	806.10(1)	3rd	Maliciously injure, destroy, or
15			interfere with vehicles or
16			equipment used in firefighting.
17	806.10(2)	3rd	Interferes with or assaults
18			firefighter in performance of
19			duty.
20	810.09(2)(c)	3rd	Trespass on property other than
21			structure or conveyance armed
22			with firearm or dangerous weapon.
23	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but
24			less than \$10,000.
25	815.04(4)(b)	2nd	Computer offense devised to
26			defraud or obtain property.
27	817.034(4)(a)3.	3rd	Engages in scheme to defraud
28			(Florida Communications Fraud
29			Act), property valued at less
30			than \$20,000.
31	817.233	3rd	Burning to defraud insurer.

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1	817.234(8)&(9)	3rd	Unlawful solicitation of persons
2			involved in motor vehicle
3			accidents.
4	817.234(11)(a)	3rd	Insurance fraud; property value
5			less than \$20,000.
6	817.505(4)	3rd	Patient brokering.
7	828.12(2)	3rd	Tortures any animal with intent
8			to inflict intense pain, serious
9			physical injury, or death.
10	831.28(2)(a)	3rd	Counterfeiting a payment
11			instrument with intent to defraud
12			or possessing a counterfeit
13			payment instrument.
14	831.29	2nd	Possession of instruments for
15			counterfeiting drivers' licenses
16			or identification cards.
17	838.021(3)(b)	3rd	Threatens unlawful harm to public
18			servant.
19	843.19	3rd	Injure, disable, or kill police
20			dog or horse.
21	870.01(2)	3rd	Riot; inciting or encouraging.
22	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
23			cannabis (or other s.
24			893.03(1)(c), (2)(c)1., (2)(c)2.,
25			(2)(c)3., (2)(c)5., (2)(c)6.,
26			(2)(c)7., (2)(c)8., (2)(c)9.,
27			(3), or (4) drugs).
28	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s.
29			893.03(1)(c), (2)(c)1., (2)(c)2.,
30			(2)(c)3., (2)(c)5., (2)(c)6.,
31			(2)(c)7., (2)(c)8., (2)(c)9.,

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1			(3), or (4) drugs within 200 feet
2			of university or public park.
3	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.
4			893.03(1)(c), (2)(c)1., (2)(c)2.,
5			(2)(c)3., (2)(c)5., (2)(c)6.,
6			(2)(c)7., (2)(c)8., (2)(c)9.,
7			(3), or (4) drugs within 200 feet
8			of public housing facility.
9	893.13(6)(a)	3rd	Possession of any controlled
10			substance other than felony
11			possession of cannabis.
12	893.13(7)(a)9.	3rd	Obtain or attempt to obtain
13			controlled substance by fraud,
14			forgery, misrepresentation, etc.
15	893.13(7)(a)11.	3rd	Furnish false or fraudulent
16			material information on any
17			document or record required by
18			chapter 893.
19	918.13(1)(a)	3rd	Alter, destroy, or conceal
20			investigation evidence.
21	944.47		
22	(1)(a)1.-2.	3rd	Introduce contraband to
23			correctional facility.
24	944.47(1)(c)	2nd	Possess contraband while upon the
25			grounds of a correctional
26			institution.
27	985.3141	3rd	Escapes from a juvenile facility
28			(secure detention or residential
29			commitment facility).
30			(i) LEVEL 9
31			



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1	316.193		
2	(3)(c)3.b.	1st	DUI manslaughter; failing to
3			render aid or give information.
4	<u>327.35(3)(c)3.b.</u>	<u>1st</u>	<u>BUI manslaughter; failing to</u>
5			<u>render aid or give information.</u>
6	560.123(8)(b)3.	1st	Failure to report currency or
7			payment instruments totaling or
8			exceeding \$100,000 by money
9			transmitter.
10	560.125(5)(c)	1st	Money transmitter business by
11			unauthorized person, currency, or
12			payment instruments totaling or
13			exceeding \$100,000.
14	655.50(10)(b)3.	1st	Failure to report financial
15			transactions totaling or
16			exceeding \$100,000 by financial
17			institution.
18	755.0844	1st	Aggravated white collar crime.
19	782.04(1)	1st	Attempt, conspire, or solicit to
20			commit premeditated murder.
21	782.04(3)	1st,PBL	Accomplice to murder in
22			connection with arson, sexual
23			battery, robbery, burglary, and
24			other specified felonies.
25	782.051(1)	1st	Attempted felony murder while
26			perpetrating or attempting to
27			perpetrate a felony enumerated in
28			s. 782.04(3).
29	782.07(2)	1st	Aggravated manslaughter of an
30			elderly person or disabled adult.
31			

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1	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
2			reward or as a shield or hostage.
3	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
4			or facilitate commission of any
5			felony.
6	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
7			interfere with performance of any
8			governmental or political
9			function.
10	787.02(3)(a)	1st	False imprisonment; child under
11			age 13; perpetrator also commits
12			aggravated child abuse, sexual
13			battery, or lewd or lascivious
14			battery, molestation, conduct, or
15			exhibition.
16	790.161	1st	Attempted capital destructive
17			device offense.
18	790.166(2)	1st,PBL	Possessing, selling, using, or
19			attempting to use a weapon of
20			mass destruction.
21	794.011(2)	1st	Attempted sexual battery; victim
22			less than 12 years of age.
23	794.011(2)	Life	Sexual battery; offender younger
24			than 18 years and commits sexual
25			battery on a person less than 12
26			years.
27	794.011(4)	1st	Sexual battery; victim 12 years
28			or older, certain circumstances.
29	794.011(8)(b)	1st	Sexual battery; engage in sexual
30			conduct with minor 12 to 18 years
31			by person in familial or

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1			custodial authority.
2	800.04(5)(b)	1st	Lewd or lascivious molestation;
3			victim less than 12 years;
4			offender 18 years or older.
5	812.13(2)(a)	1st,PBL	Robbery with firearm or other
6			deadly weapon.
7	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
8			deadly weapon.
9	827.03(2)	1st	Aggravated child abuse.
10	847.0145(1)	1st	Selling, or otherwise
11			transferring custody or control,
12			of a minor.
13	847.0145(2)	1st	Purchasing, or otherwise
14			obtaining custody or control, of
15			a minor.
16	859.01	1st	Poisoning or introducing
17			bacteria, radioactive materials,
18			viruses, or chemical compounds
19			into food, drink, medicine, or
20			water with intent to kill or
21			injure another person.
22	893.135	1st	Attempted capital trafficking
23			offense.
24	893.135(1)(a)3.	1st	Trafficking in cannabis, more
25			than 10,000 lbs.
26	893.135		
27	(1)(b)1.c.	1st	Trafficking in cocaine, more than
28			400 grams, less than 150
29			kilograms.
30	893.135		
31	(1)(c)1.c.	1st	Trafficking in illegal drugs,

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1			more than 28 grams, less than 30
2			kilograms.
3	893.135		
4	(1)(d)1.c.	1st	Trafficking in phencyclidine,
5			more than 400 grams.
6	893.135		
7	(1)(e)1.c.	1st	Trafficking in methaqualone, more
8			than 25 kilograms.
9	893.135		
10	(1)(f)1.c.	1st	Trafficking in amphetamine, more
11			than 200 grams.
12	893.135		
13	(1)(h)1.c.	1st	Trafficking in
14			gamma-hydroxybutyric acid (GHB),
15			10 kilograms or more.
16	893.135		
17	(1)(i)1.c.	1st	Trafficking in 1,4-Butanediol, 10
18			kilograms or more.
19	893.135		
20	(1)(j)2.c.	1st	Trafficking in Phenethylamines,
21			400 grams or more.
22	896.101(5)(c)	1st	Money laundering, financial
23			instruments totaling or exceeding
24			\$100,000.
25	896.104(4)(a)3.	1st	Structuring transactions to evade
26			reporting or registration
27			requirements, financial
28			transactions totaling or
29			exceeding \$100,000.

30 Section 13. Section 938.07, Florida Statutes, is  
 31 amended to read:

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1           938.07 Driving or boating under the  
2 influence.--Notwithstanding any other provision of s. 316.193  
3 or s. 327.35, a court cost of \$135 shall be added to any fine  
4 imposed pursuant to s. 316.193 or s. 327.35. The clerks shall  
5 remit the funds to the Department of Revenue, \$25 of which  
6 shall be deposited in the Emergency Medical Services Trust  
7 Fund, \$50 shall be deposited in the Criminal Justice Standards  
8 and Training Trust Fund of the Department of Law Enforcement  
9 to be used for operational expenses in conducting the  
10 statewide criminal analysis laboratory system established in  
11 s. 943.32, and \$60 shall be deposited in the Brain and Spinal  
12 Cord Injury Rehabilitation Trust Fund created in s. 381.79.

13           Section 14. Paragraph (d) of subsection (2) of section  
14 943.05, Florida Statutes, is amended to read:

15           943.05 Criminal Justice Information Program; duties;  
16 crime reports.--

17           (2) The program shall:

18           (d) Adopt rules to effectively and efficiently  
19 implement, administer, manage, maintain, and use the automated  
20 fingerprint identification system and uniform offense reports  
21 and arrest reports. The rules shall be considered minimum  
22 requirements and shall not preclude a criminal justice agency  
23 from implementing its own enhancements. However, rules and  
24 forms prescribing uniform arrest or probable cause affidavits  
25 and alcohol influence reports to be used by all law  
26 enforcement agencies in making DUI arrests under s. 316.193  
27 shall be adopted, and shall be used by all law enforcement  
28 agencies in this state. The rules and forms prescribing such  
29 uniform affidavits and reports shall be adopted and  
30 implemented by July 1, 2004. Failure to use these uniform  
31 affidavits and reports, however, shall not prohibit

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1 prosecution under s. 316.193.

2 Section 15. The sum of \$216,062 is appropriated for  
3 fiscal year 2002-2003 from recurring general revenue to the  
4 Department of Corrections to be used for the purpose of  
5 implementing this act.

6 Section 16. This act shall take effect July 1, 2002.

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

10 And the title is amended as follows:

11 remove: the entire title

13 and insert:

14 A bill to be entitled  
15 An act relating to driving or boating under the  
16 influence of alcohol or controlled substances;  
17 amending s. 316.193, F.S.; reducing the number  
18 of convictions required for a felony DUI;  
19 requiring mandatory placement of an ignition  
20 interlock device under certain circumstances;  
21 revising conditions for conviction in cases of  
22 accident, serious bodily injury, or death;  
23 removing a cross reference; amending s.  
24 316.1932, F.S.; requiring a law enforcement  
25 officer to inform a person that refusal to  
26 submit to certain tests is a misdemeanor;  
27 amending s. 316.1933, F.S.; requiring a person  
28 to submit to a blood test under certain  
29 circumstances; amending s. 316.1937, F.S.;  
30 requiring placement of an ignition interlock  
31 device under certain circumstances; directing

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1 the court regarding requirements for ignition  
2 interlock devices; creating s. 316.1939, F.S.;  
3 providing a penalty for refusing to submit to a  
4 chemical or physical test of breath, urine, or  
5 blood; providing application; amending s.  
6 322.271, F.S.; providing for the privilege of  
7 driving with an ignition interlock device while  
8 a license is revoked or suspended, under  
9 certain circumstances; amending s. 327.35,  
10 F.S.; reducing the number of convictions  
11 required for a felony BUI; revising conditions  
12 for conviction in cases of accident, serious  
13 bodily injury, or death; conforming cross  
14 references; amending s. 327.352, F.S.;  
15 providing for notification that refusal to  
16 submit to a test of breath, blood, or urine  
17 under certain circumstances is a misdemeanor;  
18 amending s. 327.353, F.S.; requiring a person  
19 to submit to a blood test under certain  
20 circumstances; providing that the test need not  
21 be incidental to a lawful arrest; creating s.  
22 327.359, F.S.; providing a penalty for refusing  
23 to submit to a chemical or physical test of  
24 breath, urine, or blood; providing application;  
25 creating s. 397.6755, F.S.; providing for  
26 evidence and criteria for involuntary admission  
27 and treatment; providing funding; amending s.  
28 921.0022, F.S.; revising provisions relating to  
29 certain DUI offenses; including certain BUI  
30 offenses within the offense severity ranking  
31 chart; amending s. 938.07, F.S.; providing for

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application of a fee to persons found guilty of boating under the influence; conforming a cross reference; amending s. 943.05, F.S.; providing for adoption of rules and forms for making DUI arrests; providing an appropriation; providing an effective date.