

By Senator Campbell

33-1714-02

See CS/HB 1057

1 A bill to be entitled
2 An act relating to driving or boating under the
3 influence of alcohol or controlled substances;
4 amending s. 316.193, F.S.; reducing the number
5 of convictions required for a felony DUI;
6 requiring mandatory placement of an interlock
7 device under certain circumstances; providing
8 for the forfeiture of vehicles under certain
9 circumstances; amending conditions for
10 conviction in cases of accident, serious bodily
11 injury, or death; removing a cross-reference;
12 allowing a law enforcement officer to place a
13 person in protective custody under certain
14 circumstances; requiring a person placed in
15 protective custody to pay reasonable costs of
16 evaluation and treatment under certain
17 circumstances; amending s. 316.1932, F.S.;
18 requiring a law enforcement officer to inform a
19 person that refusal to submit to certain tests
20 is a misdemeanor; amending s. 316.1933, F.S.;
21 requiring a person to submit to a blood test
22 under certain circumstances; providing that the
23 test need not be incidental to a lawful arrest;
24 providing that a breath-alcohol test may
25 substitute for a blood-alcohol test under
26 certain circumstances; creating s. 316.1939,
27 F.S.; providing a penalty for refusing to
28 submit to a chemical or physical test of
29 breath, urine, or blood; providing application;
30 amending s. 327.35, F.S.; reducing the number
31 of convictions required for a felony BUI;

1 providing for the forfeiture of vessels under
2 certain circumstances; amending conditions for
3 conviction in cases of accident, serious bodily
4 injury, or death; conforming cross-references;
5 allowing a law enforcement officer to place a
6 person in protective custody under certain
7 circumstances; requiring a person placed in
8 protective custody to pay reasonable costs of
9 evaluation and treatment under certain
10 circumstances; amending s. 327.352, F.S.;
11 requiring a law enforcement officer to inform a
12 person that refusal to submit to certain tests
13 is a misdemeanor; amending s. 327.353, F.S.;
14 requiring a person to submit to a blood test
15 under certain circumstances; providing that the
16 test need not be incidental to a lawful arrest;
17 providing that a breath-alcohol test may
18 substitute for a blood-alcohol test under
19 certain circumstances; creating s. 327.359,
20 F.S.; providing a penalty for refusing to
21 submit to a chemical or physical test of
22 breath, urine, or blood; providing application;
23 creating s. 397.6755, F.S.; specifying grounds
24 for which a court may determine that criteria
25 exist for involuntary admission and treatment
26 of certain persons; requiring payment for such
27 evaluation and treatment from a certain fund;
28 requiring persons placed in such involuntary
29 custody to reimburse the provider of services
30 under certain circumstances; amending s.
31 921.0022, F.S.; revising provisions relating to

1 certain DUI offenses; including certain BUI
2 offenses within the offense severity ranking
3 chart; amending s. 932.701, F.S.; redefining
4 "contraband article"; amending s. 938.07, F.S.;
5 providing for application of a fee to persons
6 found guilty of boating under the influence;
7 conforming a cross-reference; providing an
8 effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsections (2), (3), (4), and (9) of
13 section 316.193, Florida Statutes, are amended to read:

14 316.193 Driving under the influence; penalties.--

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 and mandatory placement for a period of not less
23 than 2 years, at the convicted person's sole expense, of an
24 interlock device approved by the Department of Highway Safety
25 and Motor Vehicles upon all vehicles owned, individually or
26 jointly, that are routinely operated by the convicted person--

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

29 2. By imprisonment for:

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

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

1 ~~c. Not more than 12 months for a third conviction.~~
2 (b) Any person who is convicted of a third ~~fourth~~ or
3 subsequent violation of this section is guilty of a felony of
4 the third degree, punishable as provided in s. 775.082, s.
5 775.083, or s. 775.084; however, the fine imposed for such
6 third ~~fourth~~ or subsequent violation may be not less than
7 \$1,000. Further, any vehicle owned by the convicted person and
8 used in the commission of the offense shall be forfeited to
9 the state in accordance with the provisions of the Florida
10 Contraband Forfeiture Act, ss. 932.701-932.707.
11 (3) Any person:
12 (a) Who is in violation of subsection (1);
13 (b) Who operates a vehicle; and
14 (c) Who, by reason of such operation, causes or
15 contributes to the cause of:
16 1. Damage to the property or person of another commits
17 a misdemeanor of the first degree, punishable as provided in
18 s. 775.082 or s. 775.083.
19 2. Serious bodily injury to another, as defined in s.
20 316.1933, commits a felony of the third degree, punishable as
21 provided in s. 775.082, s. 775.083, or s. 775.084.
22 3. The death of any human being commits DUI
23 manslaughter, and commits:
24 a. A felony of the second degree, punishable as
25 provided in s. 775.082, s. 775.083, or s. 775.084.
26 b. A felony of the first degree, punishable as
27 provided in s. 775.082, s. 775.083, or s. 775.084, if:
28 (I) At the time of the crash, the person knew, or
29 should have known, that the crash occurred; and
30 (II) The person failed to give information and render
31 aid as required by s. 316.062.

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

7 (a) By a fine of:

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

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

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

14 (b) By imprisonment for:

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

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

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

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

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

25 1.(a) Until the person is no longer under the
26 influence of alcoholic beverages, any chemical substance set
27 forth in s. 877.111, or any substance controlled under chapter
28 893 and affected to the extent that his or her normal
29 faculties are impaired;

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

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

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

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

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

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

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

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

26 Section 2. Section 316.1932, Florida Statutes, is
27 amended to read:

28 316.1932 Breath, blood, and urine tests for alcohol,
29 chemical substances, or controlled substances; implied
30 consent; refusal ~~right to refuse~~.--

31

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

1 does not preclude the administration of another type of test.
2 The person shall be told that his or her failure to submit to
3 any lawful test of his or her breath or urine, or both, is a
4 misdemeanor and, in addition, will result in the suspension of
5 the person's privilege to operate a motor vehicle for a period
6 of 1 year for a first refusal, or for a period of 18 months if
7 the driving privilege of such person has been previously
8 suspended as a result of a refusal to submit to such a test or
9 tests. The refusal to submit to a chemical or physical breath
10 test or to a urine test upon the request of a law enforcement
11 officer as provided in this section is admissible into
12 evidence in any criminal proceeding.

13 2. The Alcohol Testing Program within the Department
14 of Law Enforcement is responsible for the regulation of the
15 operation, inspection, and registration of breath test
16 instruments utilized under the driving and boating under the
17 influence provisions and related provisions located in this
18 chapter and chapters 322 and 327. The program is responsible
19 for the regulation of the individuals who operate, inspect,
20 and instruct on the breath test instruments utilized in the
21 driving and boating under the influence provisions and related
22 provisions located in this chapter and chapters 322 and 327.
23 The program is further responsible for the regulation of blood
24 analysts who conduct blood testing to be utilized under the
25 driving and boating under the influence provisions and related
26 provisions located in this chapter and chapters 322 and 327.
27 The program shall:

28 a. Establish uniform criteria for the issuance of
29 permits to breath test operators, agency inspectors,
30 instructors, blood analysts, and instruments.

31

1 b. Have the authority to permit breath test operators,
2 agency inspectors, instructors, blood analysts, and
3 instruments.

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

7 d. Establish uniform requirements for instruction and
8 curricula for the operation and inspection of approved
9 instruments.

10 e. Have the authority to specify one approved
11 curriculum for the operation and inspection of approved
12 instruments.

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

15 g. Have the authority to approve or disapprove breath
16 test instruments and accompanying paraphernalia for use
17 pursuant to the driving and boating under the influence
18 provisions and related provisions located in this chapter and
19 chapters 322 and 327.

20 h. With the approval of the executive director of the
21 Department of Law Enforcement, make and enter into contracts
22 and agreements with other agencies, organizations,
23 associations, corporations, individuals, or federal agencies
24 as are necessary, expedient, or incidental to the performance
25 of duties.

26 i. Issue final orders which include findings of fact
27 and conclusions of law and which constitute final agency
28 action for the purpose of chapter 120.

29 j. Enforce compliance with the provisions of this
30 section through civil or administrative proceedings.

31

1 k. Make recommendations concerning any matter within
2 the purview of this section, this chapter, chapter 322, or
3 chapter 327.

4 l. Promulgate rules for the administration and
5 implementation of this section, including definitions of
6 terms.

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

9 n. Have the authority to approve the type of blood
10 test utilized under the driving and boating under the
11 influence provisions and related provisions located in this
12 chapter and chapters 322 and 327.

13 o. Have the authority to specify techniques and
14 methods for breath alcohol testing and blood testing utilized
15 under the driving and boating under the influence provisions
16 and related provisions located in this chapter and chapters
17 322 and 327.

18 p. Have the authority to approve repair facilities for
19 the approved breath test instruments, including the authority
20 to set criteria for approval.

21
22 Nothing in this section shall be construed to supersede
23 provisions in this chapter and chapters 322 and 327. The
24 specifications in this section are derived from the power and
25 authority previously and currently possessed by the Department
26 of Law Enforcement and are enumerated to conform with the
27 mandates of chapter 99-379, Laws of Florida.

28 (b)1. The blood-alcohol level must be based upon grams
29 of alcohol per 100 milliliters of blood. The breath-alcohol
30 level must be based upon grams of alcohol per 210 liters of
31 breath.

1 2. An analysis of a person's breath, in order to be
2 considered valid under this section, must have been performed
3 substantially according to methods approved by the Department
4 of Law Enforcement. For this purpose, the department may
5 approve satisfactory techniques or methods. Any insubstantial
6 differences between approved techniques and actual testing
7 procedures in any individual case do not render the test or
8 test results invalid.

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

1 public highways of this state. Any person who is capable of
2 refusal shall be told that his or her failure to submit to
3 such a blood test is a misdemeanor and, in addition, will
4 result in the suspension of the person's privilege to operate
5 a motor vehicle for a period of 1 year for a first refusal, or
6 for a period of 18 months if the driving privilege of the
7 person has been suspended previously as a result of a refusal
8 to submit to such a test or tests. The refusal to submit to a
9 blood test upon the request of a law enforcement officer is
10 admissible in evidence in any criminal proceeding.

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

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

27 2. A nonresident or any other person driving in a
28 status exempt from the requirements of the driver's license
29 law, by his or her act of driving in such exempt status, is
30 deemed to have expressed his or her consent to the provisions
31 of this section.

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

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

16 2.a. Only a physician, certified paramedic, registered
17 nurse, licensed practical nurse, other personnel authorized by
18 a hospital to draw blood, or duly licensed clinical laboratory
19 director, supervisor, technologist, or technician, acting at
20 the request of a law enforcement officer, may withdraw blood
21 for the purpose of determining its alcoholic content or the
22 presence of chemical substances or controlled substances
23 therein. However, the failure of a law enforcement officer to
24 request the withdrawal of blood does not affect the
25 admissibility of a test of blood withdrawn for medical
26 purposes.

27 b. Notwithstanding any provision of law pertaining to
28 the confidentiality of hospital records or other medical
29 records, if a health care provider, who is providing medical
30 care in a health care facility to a person injured in a motor
31 vehicle crash, becomes aware, as a result of any blood test

1 performed in the course of that medical treatment, that the
2 person's blood-alcohol level meets or exceeds the
3 blood-alcohol level specified in s. 316.193(1)(b), the health
4 care provider may notify any law enforcement officer or law
5 enforcement agency. Any such notice must be given within a
6 reasonable time after the health care provider receives the
7 test result. Any such notice shall be used only for the
8 purpose of providing the law enforcement officer with
9 reasonable cause to request the withdrawal of a blood sample
10 pursuant to this section.

11 c. The notice shall consist only of the name of the
12 person being treated, the name of the person who drew the
13 blood, the blood-alcohol level indicated by the test, and the
14 date and time of the administration of the test.

15 d. Nothing contained in s. 395.3025(4), s. 456.057, or
16 any applicable practice act affects the authority to provide
17 notice under this section, and the health care provider is not
18 considered to have breached any duty owed to the person under
19 s. 395.3025(4), s. 456.057, or any applicable practice act by
20 providing notice or failing to provide notice. It shall not be
21 a breach of any ethical, moral, or legal duty for a health
22 care provider to provide notice or fail to provide notice.

23 e. A civil, criminal, or administrative action may not
24 be brought against any person or health care provider
25 participating in good faith in the provision of notice or
26 failure to provide notice as provided in this section. Any
27 person or health care provider participating in the provision
28 of notice or failure to provide notice as provided in this
29 section shall be immune from any civil or criminal liability
30 and from any professional disciplinary action with respect to
31 the provision of notice or failure to provide notice under

1 this section. Any such participant has the same immunity with
2 respect to participating in any judicial proceedings resulting
3 from the notice or failure to provide notice.

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. 316.193 upon request for such
22 information.

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

25 316.1933 Blood test for impairment or intoxication in
26 cases of death or serious bodily injury; right to use
27 reasonable force.--

28 (1)(a) ~~Notwithstanding any recognized ability to~~
29 ~~refuse to submit to the tests provided in s. 316.1932 or any~~
30 ~~recognized power to revoke the implied consent to such tests,~~
31 If a law enforcement officer has probable cause to believe

1 that a motor vehicle driven by or in the actual physical
2 control of a person under the influence of alcoholic
3 beverages, any chemical substances, or any controlled
4 substances has caused the death or serious bodily injury of a
5 human being, ~~such person shall submit, upon the request of a~~
6 law enforcement officer shall require the person driving or in
7 actual physical control of the motor vehicle to submit,to a
8 test of the person's blood for the purpose of determining the
9 alcoholic content thereof or the presence of chemical
10 substances as set forth in s. 877.111 or any substance
11 controlled under chapter 893. The law enforcement officer may
12 use reasonable force if necessary to require such person to
13 submit to the administration of the blood test. The blood
14 test shall be performed in a reasonable manner.

15 Notwithstanding s. 316.1932, the testing required by this
16 paragraph need not be incidental to a lawful arrest of the
17 person.

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

23 (c) The law enforcement officer shall offer any person
24 subject to a blood test under this subsection the opportunity
25 to submit to an approved chemical test of the person's breath
26 and, if the person submits to the test and a valid reading is
27 obtained, the blood test shall be waived. This paragraph
28 shall not apply to any person who is unconscious or whose
29 mental or physical condition does not allow the administration
30 of a breath test or any person who the law enforcement officer
31 has probable cause to believe was operating a motor vehicle

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

3 Section 4. Section 316.1939, Florida Statutes, is
4 created to read:

5 316.1939 Refusal to submit to testing; penalties.--

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

9 (a) Who the arresting law enforcement officer had
10 probable cause to believe was driving or in actual physical
11 control of a motor vehicle in this state while under the
12 influence of alcoholic beverages, chemical substances, or
13 controlled substances.

14 (b) Who was placed under lawful arrest for a violation
15 of s. 316.193, unless such test was requested pursuant to s.
16 316.1932(1)(c).

17 (c) Who was informed that if he or she refused to
18 submit to such test, his or her privilege to operate a motor
19 vehicle would be suspended for a period of 1 year or, in the
20 case of a second or subsequent refusal, for a period of 18
21 months, and that the refusal to submit to such test is a
22 misdemeanor.

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

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

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

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

4 Section 5. Subsections (2), (3), (4), and (8) of
5 section 327.35, Florida Statutes, are amended to read:

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

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

11 1. By a fine of:

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

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

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

18 2. By imprisonment for:

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

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

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

22 (b) Any person who is convicted of a third ~~fourth~~ or
23 subsequent violation of this section is guilty of a felony of
24 the third degree, punishable as provided in s. 775.082, s.
25 775.083, or s. 775.084; however, the fine imposed for such
26 third ~~fourth~~ or subsequent violation may not be less than
27 \$1,000. Further, any vessel owned by the convicted person and
28 used in the commission of the offense shall be forfeited to
29 the state in accordance with the provisions of the Florida
30 Contraband Forfeiture Act, ss. 932.701-932.707.

31 (3) Any person:

- 1 (a) Who is in violation of subsection (1);
2 (b) Who operates a vessel; and
3 (c) Who, by reason of such operation, causes or
4 contributes to the cause of:
- 5 1. Damage to the property or person of another commits
6 a misdemeanor of the first degree, punishable as provided in
7 s. 775.082 or s. 775.083.
- 8 2. Serious bodily injury to another, as defined in s.
9 327.353 ~~316.1933~~, commits a felony of the third degree,
10 punishable as provided in s. 775.082, s. 775.083, or s.
11 775.084.
- 12 3. The death of any human being commits BUI
13 manslaughter, and commits:
- 14 a. A felony of the second degree, punishable as
15 provided in s. 775.082, s. 775.083, or s. 775.084.
- 16 b. A felony of the first degree, punishable as
17 provided in s. 775.082, s. 775.083, or s. 775.084, if:
- 18 (I) At the time of the accident, the person knew, or
19 should have known, that the accident occurred; and
20 (II) The person failed to give information and render
21 aid as required by s. 327.30 ~~316.062~~.
- 22
- 23 This sub-subparagraph does not require that the person knew
24 that the accident resulted in injury or death.
- 25 (4) Any person who is convicted of a violation of
26 subsection (1) and who has a blood-alcohol level or
27 breath-alcohol level of 0.20 or higher, or any person who is
28 convicted of a violation of subsection (1) and who at the time
29 of the offense was accompanied in the vessel by a person under
30 the age of 18 years, shall be punished:
- 31 (a) By a fine of:

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

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

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

7 (b) By imprisonment for:

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

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

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

11
12 For the purposes of this subsection, only the instant offense
13 is required to be a violation of subsection (1) by a person
14 who has a blood-alcohol level or breath-alcohol level of 0.20
15 or higher.

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

18 ~~1.(a)~~ Until the person is no longer under the
19 influence of alcoholic beverages, any chemical substance set
20 forth in s. 877.111, or any substance controlled under chapter
21 893 and affected to the extent that his or her normal
22 faculties are impaired;

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

25 ~~3.(c)~~ Until 8 hours have elapsed from the time the
26 person was arrested.

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

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

31

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

4 3. The person, by reason of operation of a vessel, has
5 caused death or serious bodily injury as defined in s.
6 327.353; or

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

9
10 The election to place a person in protective custody may be
11 done at the time of arrest, but transfer of the person to a
12 facility shall not occur prior to the conclusion of the time
13 period set forth in paragraph (a). The provisions of this
14 paragraph are in addition to, not in lieu of, the provisions
15 of subsection (5). A court shall order any person placed in
16 protective custody pursuant to this paragraph, who is
17 subsequently convicted of a violation of this section, to pay
18 the reasonable costs of evaluation and treatment.

19 Section 6. Section 327.352, Florida Statutes, is
20 amended to read:

21 327.352 Breath, blood, and urine tests for alcohol,
22 chemical substances, or controlled substances; implied
23 consent; ~~refusal right to refuse.--~~

24 (1)(a) The Legislature declares that the operation of
25 a vessel is a privilege that must be exercised in a reasonable
26 manner. In order to protect the public health and safety, it
27 is essential that a lawful and effective means of reducing the
28 incidence of boating while impaired or intoxicated be
29 established. Therefore, any person who accepts the privilege
30 extended by the laws of this state of operating a vessel
31 within this state is, by so operating such vessel, deemed to

1 have given his or her consent to submit to an approved
2 chemical test or physical test including, but not limited to,
3 an infrared light test of his or her breath for the purpose of
4 determining the alcoholic content of his or her blood or
5 breath, and to a urine test for the purpose of detecting the
6 presence of chemical substances as set forth in s. 877.111 or
7 controlled substances, if the person is lawfully arrested for
8 any offense allegedly committed while the person was operating
9 a vessel while under the influence of alcoholic beverages,
10 chemical substances, or controlled substances. The chemical
11 or physical breath test must be incidental to a lawful arrest
12 and administered at the request of a law enforcement officer
13 who has reasonable cause to believe such person was operating
14 the vessel within this state while under the influence of
15 alcoholic beverages. The urine test must be incidental to a
16 lawful arrest and administered at a detention facility or any
17 other facility, mobile or otherwise, which is equipped to
18 administer such tests at the request of a law enforcement
19 officer who has reasonable cause to believe such person was
20 operating a vessel within this state while under the influence
21 of controlled substances. The urine test shall be administered
22 at a detention facility or any other facility, mobile or
23 otherwise, which is equipped to administer such tests in a
24 reasonable manner that will ensure the accuracy of the
25 specimen and maintain the privacy of the individual involved.
26 The administration of one type of test does not preclude the
27 administration of another type of test. The person shall be
28 told that his or her failure to submit to any lawful test of
29 his or her breath or urine, or both, is a misdemeanor and, in
30 addition, will result in a civil penalty of \$500. The refusal
31 to submit to a chemical or physical breath or urine test upon

1 the request of a law enforcement officer as provided in this
2 section is admissible into evidence in any criminal
3 proceeding.

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

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

15 3. The Alcohol Testing Program within the Department
16 of Law Enforcement is responsible for the regulation of the
17 operation, inspection, and registration of breath test
18 instruments utilized under the driving and boating under the
19 influence provisions and related provisions located in this
20 chapter and chapters 316 and 322. The program is responsible
21 for the regulation of the individuals who operate, inspect,
22 and instruct on the breath test instruments utilized in the
23 driving and boating under the influence provisions and related
24 provisions located in this chapter and chapters 316 and 322.
25 The program is further responsible for the regulation of blood
26 analysts who conduct blood testing to be utilized under the
27 driving and boating under the influence provisions and related
28 provisions located in this chapter and chapters 316 and 322.
29 The program shall:

30
31

- 1 a. Establish uniform criteria for the issuance of
2 permits to breath test operators, agency inspectors,
3 instructors, blood analysts, and instruments.
- 4 b. Have the authority to permit breath test operators,
5 agency inspectors, instructors, blood analysts, and
6 instruments.
- 7 c. Have the authority to discipline and suspend,
8 revoke, or renew the permits of breath test operators, agency
9 inspectors, instructors, blood analysts, and instruments.
- 10 d. Establish uniform requirements for instruction and
11 curricula for the operation and inspection of approved
12 instruments.
- 13 e. Have the authority to specify one approved
14 curriculum for the operation and inspection of approved
15 instruments.
- 16 f. Establish a procedure for the approval of breath
17 test operator and agency inspector classes.
- 18 g. Have the authority to approve or disapprove breath
19 test instruments and accompanying paraphernalia for use
20 pursuant to the driving and boating under the influence
21 provisions and related provisions located in this chapter and
22 chapters 316 and 322.
- 23 h. With the approval of the executive director of the
24 Department of Law Enforcement, make and enter into contracts
25 and agreements with other agencies, organizations,
26 associations, corporations, individuals, or federal agencies
27 as are necessary, expedient, or incidental to the performance
28 of duties.
- 29 i. Issue final orders which include findings of fact
30 and conclusions of law and which constitute final agency
31 action for the purpose of chapter 120.

1 j. Enforce compliance with the provisions of this
2 section through civil or administrative proceedings.

3 k. Make recommendations concerning any matter within
4 the purview of this section, this chapter, chapter 316, or
5 chapter 322.

6 l. Promulgate rules for the administration and
7 implementation of this section, including definitions of
8 terms.

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

11 n. Have the authority to approve the type of blood
12 test utilized under the driving and boating under the
13 influence provisions and related provisions located in this
14 chapter and chapters 316 and 322.

15 o. Have the authority to specify techniques and
16 methods for breath alcohol testing and blood testing utilized
17 under the driving and boating under the influence provisions
18 and related provisions located in this chapter and chapters
19 316 and 322.

20 p. Have the authority to approve repair facilities for
21 the approved breath test instruments, including the authority
22 to set criteria for approval.

23
24 Nothing in this section shall be construed to supersede
25 provisions in this chapter and chapters 316 and 322. The
26 specifications in this section are derived from the power and
27 authority previously and currently possessed by the Department
28 of Law Enforcement and are enumerated to conform with the
29 mandates of chapter 99-379, Laws of Florida.

30 (c) Any person who accepts the privilege extended by
31 the laws of this state of operating a vessel within this state

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

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

1 substances or controlled substances; and, if so requested, the
2 arresting officer shall have the test performed.

3 (e)1. The tests determining the weight of alcohol in
4 the defendant's blood or breath shall be administered at the
5 request of a law enforcement officer substantially in
6 accordance with rules of the Department of Law Enforcement.
7 However, the failure of a law enforcement officer to request
8 the withdrawal of blood does not affect the admissibility of a
9 test of blood withdrawn for medical purposes.

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

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

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

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

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

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

31

1 (3) Notwithstanding any provision of law pertaining to
2 the confidentiality of hospital records or other medical
3 records, information relating to the alcoholic content of the
4 blood or breath or the presence of chemical substances or
5 controlled substances in the blood obtained pursuant to this
6 section shall be released to a court, prosecuting attorney,
7 defense attorney, or law enforcement officer in connection
8 with an alleged violation of s. 327.35 upon request for such
9 information.

10 Section 7. Subsection (1) of section 327.353, Florida
11 Statutes, is amended to read:

12 327.353 Blood test for impairment or intoxication in
13 cases of death or serious bodily injury; right to use
14 reasonable force.--

15 (1)(a) ~~Notwithstanding any recognized ability to~~
16 ~~refuse to submit to the tests provided in s. 327.352 or any~~
17 ~~recognized power to revoke the implied consent to such tests,~~
18 If a law enforcement officer has probable cause to believe
19 that a vessel operated by a person under the influence of
20 alcoholic beverages, any chemical substances, or any
21 controlled substances has caused the death or serious bodily
22 injury of a human being, ~~the person shall submit, upon the~~
23 ~~request of a law enforcement officer~~ shall require the person
24 operating or in actual physical control of the vessel to
25 submit, to a test of the person's blood for the purpose of
26 determining the alcoholic content thereof or the presence of
27 chemical substances as set forth in s. 877.111 or any
28 substance controlled under chapter 893. The law enforcement
29 officer may use reasonable force if necessary to require the
30 person to submit to the administration of the blood test. The
31 blood test shall be performed in a reasonable manner.

1 Notwithstanding s. 327.352, the testing required by this
2 paragraph need not be incidental to a lawful arrest of the
3 person.

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

9 (c) The law enforcement officer shall offer any person
10 subject to a blood test under this subsection the opportunity
11 to submit to an approved chemical test of the person's breath
12 and, if the person submits to the test and a valid reading is
13 obtained, the blood test shall be waived. This paragraph shall
14 not apply to any person who is unconscious or whose mental or
15 physical condition does not allow the administration of a
16 breath test or any person who the law enforcement officer has
17 probable cause to believe was operating a vessel under the
18 influence of any chemical substances as set forth in s.
19 877.111 or any controlled substances.

20 Section 8. Section 327.359, Florida Statutes, is
21 created to read:

22 327.359 Refusal to submit to testing; penalties.--Any
23 person who has refused to submit to a chemical or physical
24 test of his or her breath, blood, or urine, as described in s.
25 327.352, and:

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

31

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

4 (3) Who was informed that if he or she refused to
5 submit to such test he or she is subject to a fine of \$500,
6 and that the refusal to submit to such 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 9. Section 397.6755, Florida Statutes, is
14 created to read:

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

17 (1) In addition to any other ground that may give rise
18 to a finding that a person has lost the power of self-control
19 with respect to substance use and is likely to inflict
20 physical harm on himself or herself or another, a court may
21 find that a person has lost the power of self-control with
22 respect to substance use and is likely to inflict physical
23 harm on himself or herself or another if the person has been
24 arrested for a violation of s. 316.193 or s. 327.35, and:

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

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

30
31

1 (c) The person, by reason of operation of a motor
2 vehicle or a vessel, has caused death or serious bodily injury
3 as defined in s. 316.1933 or s. 327.353; or

4 (d) The person is on pretrial release for a previous
5 offense under s. 316.193 or s. 327.35.

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

18 Section 10. Paragraphs (f) and (i) of subsection (3)
19 of section 921.0022, Florida Statutes, as amended by section 2
20 of chapter 2001-358, Laws of Florida, are amended to read:

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

23 (3) OFFENSE SEVERITY RANKING CHART

24

25 Florida	Felony	
26 Statute	Degree	Description
28		(f) LEVEL 6
29 316.027(1)(b)	2nd	Accident involving death, failure
30		to stop; leaving scene.

31

1	316.193(2)(b)	3rd	Felony DUI, <u>3rd</u> 4th or subsequent
2			conviction.
3	<u>327.35(2)(b)</u>	<u>3rd</u>	<u>Felony BUI, 3rd or subsequent</u>
4			<u>conviction.</u>
5	775.0875(1)	3rd	Taking firearm from law
6			enforcement officer.
7	775.21(10)	3rd	Sexual predators; failure to
8			register; failure to renew
9			driver's license or
10			identification card.
11	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
12			without intent to kill.
13	784.021(1)(b)	3rd	Aggravated assault; intent to
14			commit felony.
15	784.041	3rd	Felony battery.
16	784.048(3)	3rd	Aggravated stalking; credible
17			threat.
18	784.048(5)	3rd	Aggravated stalking of person
19			under 16.
20	784.07(2)(c)	2nd	Aggravated assault on law
21			enforcement officer.
22	784.074(1)(b)	2nd	Aggravated assault on sexually
23			violent predators facility staff.
24	784.08(2)(b)	2nd	Aggravated assault on a person 65
25			years of age or older.
26	784.081(2)	2nd	Aggravated assault on specified
27			official or employee.
28	784.082(2)	2nd	Aggravated assault by detained
29			person on visitor or other
30			detainee.
31			

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

1	806.031(2)	2nd	Arson resulting in great bodily
2			harm to firefighter or any other
3			person.
4	810.02(3)(c)	2nd	Burglary of occupied structure;
5			unarmed; no assault or battery.
6	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more,
7			but less than \$100,000, grand
8			theft in 2nd degree.
9	812.014(2)(b)2.	2nd	Property stolen cargo valued at
10			less than \$50,000, grand theft in
11			2nd degree.
12	812.015(9)	2nd	Retail theft; property stolen
13			\$300 or more; second or
14			subsequent conviction.
15	812.13(2)(c)	2nd	Robbery, no firearm or other
16			weapon (strong-arm robbery).
17	817.034(4)(a)1.	1st	Communications fraud, value
18			greater than \$50,000.
19	817.4821(5)	2nd	Possess cloning paraphernalia
20			with intent to create cloned
21			cellular telephones.
22	825.102(1)	3rd	Abuse of an elderly person or
23			disabled adult.
24	825.102(3)(c)	3rd	Neglect of an elderly person or
25			disabled adult.
26	825.1025(3)	3rd	Lewd or lascivious molestation of
27			an elderly person or disabled
28			adult.
29	825.103(2)(c)	3rd	Exploiting an elderly person or
30			disabled adult and property is
31			valued at less than \$20,000.

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

1	951.22(1)	3rd	Intoxicating drug, firearm, or
2			weapon introduced into county
3			facility.
4			(i) LEVEL 9
5	316.193		
6	(3)(c)3.b.	1st	DUI manslaughter; failing to
7			render aid or give information.
8	<u>327.35(3)(c)3.b.</u>	<u>1st</u>	<u>BUI manslaughter; failing to</u>
9			<u>render aid or give information.</u>
10	560.123(8)(b)3.	1st	Failure to report currency or
11			payment instruments totaling or
12			exceeding \$100,000 by money
13			transmitter.
14	560.125(5)(c)	1st	Money transmitter business by
15			unauthorized person, currency, or
16			payment instruments totaling or
17			exceeding \$100,000.
18	655.50(10)(b)3.	1st	Failure to report financial
19			transactions totaling or
20			exceeding \$100,000 by financial
21			institution.
22	755.0844	1st	Aggravated white collar crime.
23	782.04(1)	1st	Attempt, conspire, or solicit to
24			commit premeditated murder.
25	782.04(3)	1st,PBL	Accomplice to murder in
26			connection with arson, sexual
27			battery, robbery, burglary, and
28			other specified felonies.
29			
30			
31			

1	782.051(1)	1st	Attempted felony murder while
2			perpetrating or attempting to
3			perpetrate a felony enumerated in
4			s. 782.04(3).
5	782.07(2)	1st	Aggravated manslaughter of an
6			elderly person or disabled adult.
7	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
8			reward or as a shield or hostage.
9	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
10			or facilitate commission of any
11			felony.
12	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
13			interfere with performance of any
14			governmental or political
15			function.
16	787.02(3)(a)	1st	False imprisonment; child under
17			age 13; perpetrator also commits
18			aggravated child abuse, sexual
19			battery, or lewd or lascivious
20			battery, molestation, conduct, or
21			exhibition.
22	790.161	1st	Attempted capital destructive
23			device offense.
24	790.166(2)	1st,PBL	Possessing, selling, using, or
25			attempting to use a weapon of
26			mass destruction.
27	794.011(2)	1st	Attempted sexual battery; victim
28			less than 12 years of age.
29			
30			
31			

1	794.011(2)	Life	Sexual battery; offender younger
2			than 18 years and commits sexual
3			battery on a person less than 12
4			years.
5	794.011(4)	1st	Sexual battery; victim 12 years
6			or older, certain circumstances.
7	794.011(8)(b)	1st	Sexual battery; engage in sexual
8			conduct with minor 12 to 18 years
9			by person in familial or
10			custodial authority.
11	800.04(5)(b)	1st	Lewd or lascivious molestation;
12			victim less than 12 years;
13			offender 18 years or older.
14	812.13(2)(a)	1st,PBL	Robbery with firearm or other
15			deadly weapon.
16	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
17			deadly weapon.
18	827.03(2)	1st	Aggravated child abuse.
19	847.0145(1)	1st	Selling, or otherwise
20			transferring custody or control,
21			of a minor.
22	847.0145(2)	1st	Purchasing, or otherwise
23			obtaining custody or control, of
24			a minor.
25	859.01	1st	Poisoning or introducing
26			bacteria, radioactive materials,
27			viruses, or chemical compounds
28			into food, drink, medicine, or
29			water with intent to kill or
30			injure another person.
31			

1	893.135	1st	Attempted capital trafficking
2			offense.
3	893.135(1)(a)3.	1st	Trafficking in cannabis, more
4			than 10,000 lbs.
5	893.135		
6	(1)(b)1.c.	1st	Trafficking in cocaine, more than
7			400 grams, less than 150
8			kilograms.
9	893.135		
10	(1)(c)1.c.	1st	Trafficking in illegal drugs,
11			more than 28 grams, less than 30
12			kilograms.
13	893.135		
14	(1)(d)1.c.	1st	Trafficking in phencyclidine,
15			more than 400 grams.
16	893.135		
17	(1)(e)1.c.	1st	Trafficking in methaqualone, more
18			than 25 kilograms.
19	893.135		
20	(1)(f)1.c.	1st	Trafficking in amphetamine, more
21			than 200 grams.
22	893.135		
23	(1)(h)1.c.	1st	Trafficking in
24			gamma-hydroxybutyric acid (GHB),
25			10 kilograms or more.
26	893.135		
27	(1)(i)1.c.	1st	Trafficking in 1,4-Butanediol, 10
28			kilograms or more.
29	893.135		
30	(1)(j)2.c.	1st	Trafficking in Phenethylamines,
31			400 grams or more.

1 896.101(5)(c) 1st Money laundering, financial
2 instruments totaling or exceeding
3 \$100,000.

4 896.104(4)(a)3. 1st Structuring transactions to evade
5 reporting or registration
6 requirements, financial
7 transactions totaling or
8 exceeding \$100,000.

9 Section 11. Paragraph (a) of subsection (2) of section
10 932.701, Florida Statutes, is amended to read:

11 932.701 Short title; definitions.--

12 (2) As used in the Florida Contraband Forfeiture Act:

13 (a) "Contraband article" means:

14 1. Any controlled substance as defined in chapter 893
15 or any substance, device, paraphernalia, or currency or other
16 means of exchange that was used, was attempted to be used, or
17 was intended to be used in violation of any provision of
18 chapter 893, if the totality of the facts presented by the
19 state is clearly sufficient to meet the state's burden of
20 establishing probable cause to believe that a nexus exists
21 between the article seized and the narcotics activity, whether
22 or not the use of the contraband article can be traced to a
23 specific narcotics transaction.

24 2. Any gambling paraphernalia, lottery tickets, money,
25 currency, or other means of exchange which was used, was
26 attempted, or intended to be used in violation of the gambling
27 laws of the state.

28 3. Any equipment, liquid or solid, which was being
29 used, is being used, was attempted to be used, or intended to
30 be used in violation of the beverage or tobacco laws of the
31 state.

1 4. Any motor fuel upon which the motor fuel tax has
2 not been paid as required by law.

3 5. Any personal property, including, but not limited
4 to, any vessel, aircraft, item, object, tool, substance,
5 device, weapon, machine, vehicle of any kind, money,
6 securities, books, records, research, negotiable instruments,
7 or currency, which was used or was attempted to be used as an
8 instrumentality in the commission of, or in aiding or abetting
9 in the commission of, any felony, whether or not comprising an
10 element of the felony, or which is acquired by proceeds
11 obtained as a result of a violation of the Florida Contraband
12 Forfeiture Act. The term "contraband article" includes any
13 motor vehicle or vessel used during the course of committing
14 an offense in violation of ss. 316.193 and 327.35.

15 6. Any real property, including any right, title,
16 leasehold, or other interest in the whole of any lot or tract
17 of land, which was used, is being used, or was attempted to be
18 used as an instrumentality in the commission of, or in aiding
19 or abetting in the commission of, any felony, or which is
20 acquired by proceeds obtained as a result of a violation of
21 the Florida Contraband Forfeiture Act.

22 7. Any personal property, including, but not limited
23 to, equipment, money, securities, books, records, research,
24 negotiable instruments, currency, or any vessel, aircraft,
25 item, object, tool, substance, device, weapon, machine, or
26 vehicle of any kind in the possession of or belonging to any
27 person who takes aquaculture products in violation of s.
28 812.014(2)(c).

29 8. Any motor vehicle offered for sale in violation of
30 s. 320.28.

31

1 9. Any motor vehicle used during the course of
2 committing an offense in violation of s. 322.34(9)(a).

3 Section 12. Section 938.07, Florida Statutes, is
4 amended to read:

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

17 Section 13. This act shall take effect July 1, 2002.

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20 LEGISLATIVE SUMMARY

21 Revises laws governing driving or boating under the
22 influence of alcohol or controlled substances. (See bill
23 for details.)
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