

Bill No. SB 2296

Barcode 884782

CHAMBER ACTION

Senate

House

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The Committee on Transportation (Diaz de la Portilla)
recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (6) of section 316.193, Florida
Statutes, is amended, and subsection (13) is added to that
section, to read:

316.193 Driving under the influence; penalties.--

(6) With respect to any person convicted of a
violation of this section ~~subsection (1), regardless of any
penalty imposed pursuant to subsection (2), subsection (3), or
subsection (4):~~

(a) For the first conviction, the court shall place
the defendant on probation ~~for a period not to exceed 1 year~~
and, as a condition of such probation, shall order the
defendant to participate in public service or a community work
project for a minimum of 50 hours; or the court may order
instead, that any defendant pay an additional fine of \$10 for

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1 each hour of public service or community work otherwise
2 required, if, after consideration of the residence or location
3 of the defendant at the time public service or community work
4 is required, payment of the fine is in the best interests of
5 the state. ~~However, the total period of probation and~~
6 ~~incarceration may not exceed 1 year.~~ The court must also, as a
7 condition of probation, order the impoundment or
8 immobilization of the vehicle that was operated by or in the
9 actual control of the defendant or any one vehicle registered
10 in the defendant's name at the time of impoundment or
11 immobilization, for a period of 10 days or for the unexpired
12 term of any lease or rental agreement that expires within 10
13 days. The impoundment or immobilization must not occur
14 concurrently with the incarceration of the defendant. The
15 impoundment or immobilization order may be dismissed in
16 accordance with paragraph (e), paragraph (f), paragraph (g),
17 or paragraph (h).

18 (b) For the second conviction for an offense that
19 occurs within a period of 5 years after the date of a prior
20 conviction for violation of this section, the court shall
21 order imprisonment for not less than 10 days. The court must
22 also, as a condition of probation, order the impoundment or
23 immobilization of all vehicles owned by the defendant at the
24 time of impoundment or immobilization, for a period of 30 days
25 or for the unexpired term of any lease or rental agreement
26 that expires within 30 days. The impoundment or immobilization
27 must not occur concurrently with the incarceration of the
28 defendant and must occur concurrently with the driver's
29 license revocation imposed under s. 322.28(2)(a)2. The
30 impoundment or immobilization order may be dismissed in
31 accordance with paragraph (e), paragraph (f), paragraph (g),

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1 or paragraph (h). At least 48 hours of confinement must be
2 consecutive.

3 (c) For the third ~~or subsequent~~ conviction for an
4 offense that occurs within a period of 10 years after the date
5 of a prior conviction for violation of this section, the court
6 shall order imprisonment for not less than 30 days. The court
7 must also, as a condition of probation, order the impoundment
8 or immobilization of all vehicles owned by the defendant at
9 the time of impoundment or immobilization⁷ for a period of 90
10 days or for the unexpired term of any lease or rental
11 agreement that expires within 90 days. The impoundment or
12 immobilization shall ~~must~~ not occur concurrently with the
13 incarceration of the defendant and shall ~~must~~ occur
14 concurrently with the driver's license revocation imposed
15 under s. 322.28(2)(a)3. The impoundment or immobilization
16 order may be dismissed in accordance with paragraph (e),
17 paragraph (f), paragraph (g), or paragraph (h). At least 48
18 hours of confinement must be consecutive.

19 (d) The court must at the time of sentencing the
20 defendant issue an order for the impoundment or immobilization
21 of a vehicle. Within 7 business days after the date that the
22 court issues the order of impoundment or immobilization, the
23 clerk of the court must send notice by certified mail, return
24 receipt requested, to the registered owner of each vehicle, if
25 the registered owner is a person other than the defendant, and
26 to each person of record claiming a lien against the vehicle.

27 (e) A person who owns but was not operating the
28 vehicle when the offense occurred may submit to the court a
29 police report indicating that the vehicle was stolen at the
30 time of the offense or documentation of having purchased the
31 vehicle after the offense was committed from an entity other

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1 than the defendant or the defendant's agent. If the court
2 finds that the vehicle was stolen or that the sale was not
3 made to circumvent the order and allow the defendant continued
4 access to the vehicle, the order must be dismissed and the
5 owner of the vehicle will incur no costs. If the court denies
6 the request to dismiss the order of impoundment or
7 immobilization, the petitioner may request an evidentiary
8 hearing.

9 (f) A person who owns but was not operating the
10 vehicle when the offense occurred, and whose vehicle was
11 stolen or who purchased the vehicle after the offense was
12 committed directly from the defendant or the defendant's
13 agent, may request an evidentiary hearing to determine whether
14 the impoundment or immobilization should occur. If the court
15 finds that either the vehicle was stolen or the purchase was
16 made without knowledge of the offense, that the purchaser had
17 no relationship to the defendant other than through the
18 transaction, and that such purchase would not circumvent the
19 order and allow the defendant continued access to the vehicle,
20 the order must be dismissed and the owner of the vehicle will
21 incur no costs.

22 (g) The court shall also dismiss the order of
23 impoundment or immobilization of the vehicle if the court
24 finds that the family of the owner of the vehicle has no other
25 private or public means of transportation.

26 (h) The court may also dismiss the order of
27 impoundment or immobilization of any vehicles that are owned
28 by the defendant but that are operated solely by the employees
29 of the defendant or any business owned by the defendant.

30 (i) All costs and fees for the impoundment or
31 immobilization, including the cost of notification, must be

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1 | paid by the owner of the vehicle or, if the vehicle is leased
2 | or rented, by the person leasing or renting the vehicle,
3 | unless the impoundment or immobilization order is dismissed.
4 | All provisions of s. 713.78 shall apply.

5 | (j) The person who owns a vehicle that is impounded or
6 | immobilized under this paragraph, or a person who has a lien
7 | of record against such a vehicle and who has not requested a
8 | review of the impoundment pursuant to paragraph (e), paragraph
9 | (f), or paragraph (g), may, within 10 days after the date that
10 | person has knowledge of the location of the vehicle, file a
11 | complaint in the county in which the owner resides to
12 | determine whether the vehicle was wrongfully taken or withheld
13 | from the owner or lienholder. Upon the filing of a complaint,
14 | the owner or lienholder may have the vehicle released by
15 | posting with the court a bond or other adequate security equal
16 | to the amount of the costs and fees for impoundment or
17 | immobilization, including towing or storage, to ensure the
18 | payment of such costs and fees if the owner or lienholder does
19 | not prevail. When the bond is posted and the fee is paid as
20 | set forth in s. 28.24, the clerk of the court shall issue a
21 | certificate releasing the vehicle. At the time of release,
22 | after reasonable inspection, the owner or lienholder must give
23 | a receipt to the towing or storage company indicating any loss
24 | or damage to the vehicle or to the contents of the vehicle.

25 | (k) A defendant, in the court's discretion, may be
26 | required to serve all or any portion of a term of imprisonment
27 | to which the defendant has been sentenced pursuant to this
28 | section in a residential alcoholism treatment program or a
29 | residential drug abuse treatment program. Any time spent in
30 | such a program must be credited by the court toward the term
31 | of imprisonment.

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1 (1) For the fourth or subsequent conviction under
2 subparagraph (2)(b)3., the court shall order imprisonment for
3 not less than 2 years. There shall be no substitution of this
4 minimum mandatory term of imprisonment with treatment
5 alternatives. However, the court may, with the consent of the
6 state, order the defendant to serve a minimum mandatory
7 sentence of 1 year and 1 day of incarceration followed by a
8 period of probation during which the defendant must attend and
9 successfully complete a residential alcohol treatment program,
10 a residential drug abuse treatment program, or be placed on
11 community control. The court must also, as a condition of
12 probation, order the impoundment or immobilization of all
13 vehicles owned by the defendant at the time of impoundment or
14 immobilization for a period of 120 days or for the unexpired
15 term of any lease or rental agreement that expires within 120
16 days. The impoundment or immobilization shall not occur
17 concurrently with the incarceration of the defendant and shall
18 occur concurrently with the driver's license revocation
19 imposed under s. 322.28. The impoundment or immobilization
20 order may be dismissed in accordance with paragraph (e),
21 paragraph (f), paragraph (g), or paragraph (h). At least 48
22 hours of confinement must be consecutive.

23
24 For the purposes of this section, any conviction for a
25 violation of s. 327.35; a previous conviction for the
26 violation of former s. 316.1931, former s. 860.01, or former
27 s. 316.028; or a previous conviction outside this state for
28 driving under the influence, driving while intoxicated,
29 driving with an unlawful blood-alcohol level, driving with an
30 unlawful breath-alcohol level, or any other similar
31 alcohol-related or drug-related traffic offense, is also

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1 considered a previous conviction for violation of this
2 section. However, in satisfaction of the fine imposed pursuant
3 to this section, the court may, upon a finding that the
4 defendant is financially unable to pay either all or part of
5 the fine, order that the defendant participate for a specified
6 additional period of time in public service or a community
7 work project in lieu of payment of that portion of the fine
8 which the court determines the defendant is unable to pay. In
9 determining such additional sentence, the court shall consider
10 the amount of the unpaid portion of the fine and the
11 reasonable value of the services to be ordered; however, the
12 court may not compute the reasonable value of services at a
13 rate less than the federal minimum wage at the time of
14 sentencing.

15 (13)(a) Notwithstanding s. 921.241, every judgment of
16 guilty with respect to any offense governed by this section
17 shall comply with this subsection. Each judgment shall be in
18 writing, signed by the judge, and recorded by the clerk of the
19 circuit court. The judge shall cause to be affixed to every
20 such written judgment of guilty, in open court and in the
21 presence of such judge, the fingerprints of the defendant
22 against whom such judgment is rendered. Such fingerprints
23 shall be affixed beneath the judge's signature to any such
24 judgment. Beneath such fingerprints shall be appended a
25 certificate in substantially the following form:

26
27 "I hereby certify that the above and foregoing fingerprints
28 are of the defendant, (name) , and that they were placed
29 thereon by said defendant in my presence, in open court, this
30 the _____ day of (month) _____ (year) ."

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1 Such certificate shall be signed by the judge, whose signature
2 thereto shall be followed by the word "Judge."

3 (b) Any such written judgment of guilty, or a
4 certified copy thereof, shall be admissible in evidence in the
5 courts of this state as prima facie evidence that the
6 fingerprints appearing thereon and certified by the judge are
7 the fingerprints of the defendant against whom such judgment
8 of guilty was rendered.

9 (c) At the time the defendant's fingerprints are
10 taken, the judge shall also cause the defendant's social
11 security number to be taken. The defendant's social security
12 number shall be affixed to every written judgment of guilty,
13 in open court, in the presence of such judge, and at the time
14 the judgment is rendered. If the defendant is unable or
15 unwilling to provide his or her social security number, the
16 reason for its absence shall be indicated on the written
17 judgment.

18 Section 2. Paragraphs (a) and (c) of subsection (6) of
19 section 327.35, Florida Statutes, are amended, paragraphs (j)
20 and (k) are added to that subsection, and subsection (11) is
21 added to that section, to read:

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

24 (6) With respect to any person convicted of a
25 violation of subsection (1), regardless of any other penalty
26 imposed:

27 (a) For the first conviction, the court shall place
28 the defendant on probation ~~for a period not to exceed 1 year~~
29 and, as a condition of such probation, shall order the
30 defendant to participate in public service or a community work
31 project for a minimum of 50 hours. The court must also, as a

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1 condition of probation, order the impoundment or
 2 immobilization of the vessel that was operated by or in the
 3 actual control of the defendant or any one vehicle registered
 4 in the defendant's name at the time of impoundment or
 5 immobilization, for a period of 10 days or for the unexpired
 6 term of any lease or rental agreement that expires within 10
 7 days. The impoundment or immobilization must not occur
 8 concurrently with the incarceration of the defendant. The
 9 impoundment or immobilization order may be dismissed in
 10 accordance with paragraph (e) or paragraph (f). ~~The total~~
 11 ~~period of probation and incarceration may not exceed 1 year.~~

12 (c) For the third ~~or subsequent~~ conviction for an
 13 offense that occurs within a period of 10 years after the date
 14 of a prior conviction for violation of this section, the court
 15 shall order imprisonment for not less than 30 days. The court
 16 must also, as a condition of probation, order the impoundment
 17 or immobilization of the vessel that was operated by or in the
 18 actual control of the defendant or any one vehicle registered
 19 in the defendant's name at the time of impoundment or
 20 immobilization~~7~~ for a period of 90 days or for the unexpired
 21 term of any lease or rental agreement that expires within 90
 22 days. The impoundment or immobilization shall ~~must~~ not occur
 23 concurrently with the incarceration of the defendant. The
 24 impoundment or immobilization order may be dismissed in
 25 accordance with paragraph (e) or paragraph (f). At least 48
 26 hours of confinement must be consecutive.

27 (j) For the fourth or subsequent conviction under
 28 subparagraph (2)(b)3., the court shall order imprisonment for
 29 not less than 2 years. There shall be no substitution of this
 30 minimum mandatory term of imprisonment with treatment
 31 alternatives. However, the court may, with the consent of the

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1 state, order the defendant to serve a minimum mandatory
2 sentence of 1 year and 1 day of incarceration followed by a
3 period of probation during which the defendant must attend and
4 successfully complete a residential alcohol treatment program,
5 a residential drug abuse treatment program, or be placed on
6 community control. The court must also, as a condition of
7 probation, order the impoundment or immobilization of the
8 vessel that was operated by or in the actual control of the
9 defendant or any one vehicle registered in the defendant's
10 name at the time of impoundment or immobilization for a period
11 of 120 days or for the unexpired term of any lease or rental
12 agreement that expires within 120 days. The impoundment or
13 immobilization shall not occur concurrently with the
14 incarceration of the defendant. The impoundment or
15 immobilization order may be dismissed in accordance with
16 paragraph (e) or paragraph (f). At least 48 hours of
17 confinement must be consecutive.

18 (k) A person who owns but was not operating the vessel
19 when an offense under this section occurred may request an
20 evidentiary hearing to determine whether the impoundment or
21 immobilization should occur. If the court finds that the owner
22 was unaware of the defendant's prior conviction and sentence
23 under paragraph (a), paragraph (b), paragraph (c), or
24 paragraph (j) or if the court finds that there are other
25 mitigating circumstances that should allow the owner of the
26 vessel to secure the release of the vessel to the owner's
27 possession, the court may do so by dismissing the order of
28 impoundment or immobilization with or without cost to the
29 vessel owner.

30
31 For the purposes of this section, any conviction for a

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1 violation of s. 316.193, a previous conviction for the
 2 violation of former s. 316.1931, former s. 860.01, or former
 3 s. 316.028, or a previous conviction outside this state for
 4 driving under the influence, driving while intoxicated,
 5 driving with an unlawful blood-alcohol level, driving with an
 6 unlawful breath-alcohol level, or any other similar
 7 alcohol-related or drug-related traffic offense, is also
 8 considered a previous conviction for violation of this
 9 section.

10 (11)(a) Notwithstanding s. 921.241, every judgment of
 11 guilty with respect to any offense governed by this section
 12 shall comply with this subsection. Each judgment shall be in
 13 writing, signed by the judge, and recorded by the clerk of the
 14 circuit court. The judge shall cause to be affixed to every
 15 such written judgment of guilty, in open court and in the
 16 presence of such judge, the fingerprints of the defendant
 17 against whom such judgment is rendered. Such fingerprints
 18 shall be affixed beneath the judge's signature to any such
 19 judgment. Beneath such fingerprints shall be appended a
 20 certificate in substantially the following form:

21
 22 "I hereby certify that the above and foregoing fingerprints
 23 are of the defendant, (name) , and that they were placed
 24 thereon by said defendant in my presence, in open court, this
 25 the _____ day of (month) _____ (year)."

26
 27 Such certificate shall be signed by the judge, whose signature
 28 thereto shall be followed by the word "Judge."

29 (b) Any such written judgment of guilty, or a
 30 certified copy thereof, shall be admissible in evidence in the
 31 courts of this state as prima facie evidence that the

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1 fingerprints appearing thereon and certified by the judge are
2 the fingerprints of the defendant against whom such judgment
3 of guilty was rendered.

4 (c) At the time the defendant's fingerprints are
5 taken, the judge shall also cause the defendant's social
6 security number to be taken. The defendant's social security
7 number shall be affixed to every written judgment of guilty,
8 in open court, in the presence of such judge, and at the time
9 the judgment is rendered. If the defendant is unable or
10 unwilling to provide his or her social security number, the
11 reason for its absence shall be indicated on the written
12 judgment.

13 Section 3. This act shall take effect October 1, 2006,
14 and shall apply to offenses committed on or after that date.

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

18 And the title is amended as follows:

19 Delete everything before the enacting clause

21 and insert:

22 A bill to be entitled
23 An act relating to driving and boating under
24 the influence; amending s. 316.193, F.S.;
25 providing for applicability of sanctions;
26 requiring a specified period of imprisonment
27 for a fourth or subsequent conviction of
28 driving under the influence; prohibiting
29 substitution of treatment alternatives in
30 certain circumstances; requiring impoundment or
31 immobilization of all vehicles owned by the

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1 defendant for a specified period; providing for
2 dismissal of an impoundment order; requiring
3 records of judgments of guilty to include
4 fingerprints and social security numbers;
5 amending s. 327.35, F.S.; requiring a specified
6 period of imprisonment for a fourth or
7 subsequent conviction of boating under the
8 influence; prohibiting substitution of
9 treatment alternatives in certain
10 circumstances; requiring impoundment or
11 immobilization of the vessel operated by or in
12 the actual control of the defendant or any one
13 vehicle registered in the defendant's name at
14 the time of impoundment or immobilization for a
15 specified period; providing for dismissal of an
16 order of impoundment or immobilization under
17 certain circumstances upon request of an owner
18 who was not operating the vessel; providing for
19 dismissal of an impoundment order; requiring
20 records of judgments of guilty to include
21 fingerprints and social security numbers;
22 providing applicability; providing an effective
23 date.

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