

By the Committee on Transportation; and Senator Wise

596-2424-06

1 A bill to be entitled
2 An act relating to driving and boating under
3 the influence; amending s. 316.193, F.S.;
4 providing for applicability of sanctions;
5 requiring a specified period of imprisonment
6 for a fourth or subsequent conviction of
7 driving under the influence; prohibiting
8 substitution of treatment alternatives in
9 certain circumstances; requiring impoundment or
10 immobilization of all vehicles owned by the
11 defendant for a specified period; providing for
12 dismissal of an impoundment order; requiring
13 records of judgments of guilty to include
14 fingerprints and social security numbers;
15 amending s. 327.35, F.S.; requiring a specified
16 period of imprisonment for a fourth or
17 subsequent conviction of boating under the
18 influence; prohibiting substitution of
19 treatment alternatives in certain
20 circumstances; requiring impoundment or
21 immobilization of the vessel operated by or in
22 the actual control of the defendant or any one
23 vehicle registered in the defendant's name at
24 the time of impoundment or immobilization for a
25 specified period; providing for dismissal of an
26 order of impoundment or immobilization under
27 certain circumstances upon request of an owner
28 who was not operating the vessel; providing for
29 dismissal of an impoundment order; requiring
30 records of judgments of guilty to include
31 fingerprints and social security numbers;

1 providing applicability; providing an effective
2 date.

3
4 Be It Enacted by the Legislature of the State of Florida:

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

9 316.193 Driving under the influence; penalties.--

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

14 (a) For the first conviction, the court shall place
15 the defendant on probation ~~for a period not to exceed 1 year~~
16 and, as a condition of such probation, shall order the
17 defendant to participate in public service or a community work
18 project for a minimum of 50 hours; or the court may order
19 instead, that any defendant pay an additional fine of \$10 for
20 each hour of public service or community work otherwise
21 required, if, after consideration of the residence or location
22 of the defendant at the time public service or community work
23 is required, payment of the fine is in the best interests of
24 the state. ~~However, the total period of probation and~~
25 ~~incarceration may not exceed 1 year.~~ The court must also, as a
26 condition of probation, order the impoundment or
27 immobilization of the vehicle that was operated by or in the
28 actual control of the defendant or any one vehicle registered
29 in the defendant's name at the time of impoundment or
30 immobilization, for a period of 10 days or for the unexpired
31 term of any lease or rental agreement that expires within 10

1 days. The impoundment or immobilization must not occur
2 concurrently with the incarceration of the defendant. The
3 impoundment or immobilization order may be dismissed in
4 accordance with paragraph (e), paragraph (f), paragraph (g),
5 or paragraph (h).

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

22 (c) For the third ~~or subsequent~~ conviction for an
23 offense that occurs within a period of 10 years after the date
24 of a prior conviction for violation of this section, the court
25 shall order imprisonment for not less than 30 days. The court
26 must also, as a condition of probation, order the impoundment
27 or immobilization of all vehicles owned by the defendant at
28 the time of impoundment or immobilization, for a period of 90
29 days or for the unexpired term of any lease or rental
30 agreement that expires within 90 days. The impoundment or
31 immobilization shall ~~must~~ not occur concurrently with the

1 incarceration of the defendant and shall ~~must~~ occur
2 concurrently with the driver's license revocation imposed
3 under s. 322.28(2)(a)3. The impoundment or immobilization
4 order may be dismissed in accordance with paragraph (e),
5 paragraph (f), paragraph (g), or paragraph (h). At least 48
6 hours of confinement must be consecutive.

7 (d) The court must at the time of sentencing the
8 defendant issue an order for the impoundment or immobilization
9 of a vehicle. Within 7 business days after the date that the
10 court issues the order of impoundment or immobilization, the
11 clerk of the court must send notice by certified mail, return
12 receipt requested, to the registered owner of each vehicle, if
13 the registered owner is a person other than the defendant, and
14 to each person of record claiming a lien against the vehicle.

15 (e) A person who owns but was not operating the
16 vehicle when the offense occurred may submit to the court a
17 police report indicating that the vehicle was stolen at the
18 time of the offense or documentation of having purchased the
19 vehicle after the offense was committed from an entity other
20 than the defendant or the defendant's agent. If the court
21 finds that the vehicle was stolen or that the sale was not
22 made to circumvent the order and allow the defendant continued
23 access to the vehicle, the order must be dismissed and the
24 owner of the vehicle will incur no costs. If the court denies
25 the request to dismiss the order of impoundment or
26 immobilization, the petitioner may request an evidentiary
27 hearing.

28 (f) A person who owns but was not operating the
29 vehicle when the offense occurred, and whose vehicle was
30 stolen or who purchased the vehicle after the offense was
31 committed directly from the defendant or the defendant's

1 agent, may request an evidentiary hearing to determine whether
2 the impoundment or immobilization should occur. If the court
3 finds that either the vehicle was stolen or the purchase was
4 made without knowledge of the offense, that the purchaser had
5 no relationship to the defendant other than through the
6 transaction, and that such purchase would not circumvent the
7 order and allow the defendant continued access to the vehicle,
8 the order must be dismissed and the owner of the vehicle will
9 incur no costs.

10 (g) The court shall also dismiss the order of
11 impoundment or immobilization of the vehicle if the court
12 finds that the family of the owner of the vehicle has no other
13 private or public means of transportation.

14 (h) The court may also dismiss the order of
15 impoundment or immobilization of any vehicles that are owned
16 by the defendant but that are operated solely by the employees
17 of the defendant or any business owned by the defendant.

18 (i) All costs and fees for the impoundment or
19 immobilization, including the cost of notification, must be
20 paid by the owner of the vehicle or, if the vehicle is leased
21 or rented, by the person leasing or renting the vehicle,
22 unless the impoundment or immobilization order is dismissed.
23 All provisions of s. 713.78 shall apply.

24 (j) The person who owns a vehicle that is impounded or
25 immobilized under this paragraph, or a person who has a lien
26 of record against such a vehicle and who has not requested a
27 review of the impoundment pursuant to paragraph (e), paragraph
28 (f), or paragraph (g), may, within 10 days after the date that
29 person has knowledge of the location of the vehicle, file a
30 complaint in the county in which the owner resides to
31 determine whether the vehicle was wrongfully taken or withheld

1 from the owner or lienholder. Upon the filing of a complaint,
2 the owner or lienholder may have the vehicle released by
3 posting with the court a bond or other adequate security equal
4 to the amount of the costs and fees for impoundment or
5 immobilization, including towing or storage, to ensure the
6 payment of such costs and fees if the owner or lienholder does
7 not prevail. When the bond is posted and the fee is paid as
8 set forth in s. 28.24, the clerk of the court shall issue a
9 certificate releasing the vehicle. At the time of release,
10 after reasonable inspection, the owner or lienholder must give
11 a receipt to the towing or storage company indicating any loss
12 or damage to the vehicle or to the contents of the vehicle.

13 (k) A defendant, in the court's discretion, may be
14 required to serve all or any portion of a term of imprisonment
15 to which the defendant has been sentenced pursuant to this
16 section in a residential alcoholism treatment program or a
17 residential drug abuse treatment program. Any time spent in
18 such a program must be credited by the court toward the term
19 of imprisonment.

20 (1) For the fourth or subsequent conviction under
21 subparagraph (2)(b)3., the court shall order imprisonment for
22 not less than 2 years. There shall be no substitution of this
23 minimum mandatory term of imprisonment with treatment
24 alternatives. However, the court may, with the consent of the
25 state, order the defendant to serve a minimum mandatory
26 sentence of 1 year and 1 day of incarceration followed by a
27 period of probation during which the defendant must attend and
28 successfully complete a residential alcohol treatment program,
29 a residential drug abuse treatment program, or be placed on
30 community control. The court must also, as a condition of
31 probation, order the impoundment or immobilization of all

1 vehicles owned by the defendant at the time of impoundment or
2 immobilization for a period of 120 days or for the unexpired
3 term of any lease or rental agreement that expires within 120
4 days. The impoundment or immobilization shall not occur
5 concurrently with the incarceration of the defendant and shall
6 occur concurrently with the driver's license revocation
7 imposed under s. 322.28. The impoundment or immobilization
8 order may be dismissed in accordance with paragraph (e),
9 paragraph (f), paragraph (g), or paragraph (h). At least 48
10 hours of confinement must be consecutive.

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12 For the purposes of this section, any conviction for a
13 violation of s. 327.35; a previous conviction for the
14 violation of former s. 316.1931, former s. 860.01, or former
15 s. 316.028; or a previous conviction outside this state for
16 driving under the influence, driving while intoxicated,
17 driving with an unlawful blood-alcohol level, driving with an
18 unlawful breath-alcohol level, or any other similar
19 alcohol-related or drug-related traffic offense, is also
20 considered a previous conviction for violation of this
21 section. However, in satisfaction of the fine imposed pursuant
22 to this section, the court may, upon a finding that the
23 defendant is financially unable to pay either all or part of
24 the fine, order that the defendant participate for a specified
25 additional period of time in public service or a community
26 work project in lieu of payment of that portion of the fine
27 which the court determines the defendant is unable to pay. In
28 determining such additional sentence, the court shall consider
29 the amount of the unpaid portion of the fine and the
30 reasonable value of the services to be ordered; however, the
31 court may not compute the reasonable value of services at a

1 rate less than the federal minimum wage at the time of
2 sentencing.

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

14
15 "I hereby certify that the above and foregoing fingerprints
16 are of the defendant, (name) , and that they were placed
17 thereon by said defendant in my presence, in open court, this
18 the day of (month) (year) ."

19
20 Such certificate shall be signed by the judge, whose signature
21 thereto shall be followed by the word "Judge."

22 (b) Any such written judgment of guilty, or a
23 certified copy thereof, shall be admissible in evidence in the
24 courts of this state as prima facie evidence that the
25 fingerprints appearing thereon and certified by the judge are
26 the fingerprints of the defendant against whom such judgment
27 of guilty was rendered.

28 (c) At the time the defendant's fingerprints are
29 taken, the judge shall also cause the defendant's social
30 security number to be taken. The defendant's social security
31 number shall be affixed to every written judgment of guilty,

1 in open court, in the presence of such judge, and at the time
2 the judgment is rendered. If the defendant is unable or
3 unwilling to provide his or her social security number, the
4 reason for its absence shall be indicated on the written
5 judgment.

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

10 327.35 Boating under the influence; penalties;
11 "designated drivers".--

12 (6) With respect to any person convicted of a
13 violation of subsection (1), regardless of any other penalty
14 imposed:

15 (a) For the first conviction, the court shall place
16 the defendant on probation ~~for a period not to exceed 1 year~~
17 and, as a condition of such probation, shall order the
18 defendant to participate in public service or a community work
19 project for a minimum of 50 hours. The court must also, as a
20 condition of probation, order the impoundment or
21 immobilization of the vessel that was operated by or in the
22 actual control of the defendant or any one vehicle registered
23 in the defendant's name at the time of impoundment or
24 immobilization, for a period of 10 days or for the unexpired
25 term of any lease or rental agreement that expires within 10
26 days. The impoundment or immobilization must not occur
27 concurrently with the incarceration of the defendant. The
28 impoundment or immobilization order may be dismissed in
29 accordance with paragraph (e) or paragraph (f). ~~The total~~
30 ~~period of probation and incarceration may not exceed 1 year.~~

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

16 (j) For the fourth or subsequent conviction under
17 subparagraph (2)(b)3., the court shall order imprisonment for
18 not less than 2 years. There shall be no substitution of this
19 minimum mandatory term of imprisonment with treatment
20 alternatives. However, the court may, with the consent of the
21 state, order the defendant to serve a minimum mandatory
22 sentence of 1 year and 1 day of incarceration followed by a
23 period of probation during which the defendant must attend and
24 successfully complete a residential alcohol treatment program,
25 a residential drug abuse treatment program, or be placed on
26 community control. The court must also, as a condition of
27 probation, order the impoundment or immobilization of the
28 vessel that was operated by or in the actual control of the
29 defendant or any one vehicle registered in the defendant's
30 name at the time of impoundment or immobilization for a period
31 of 120 days or for the unexpired term of any lease or rental

1 agreement that expires within 120 days. The impoundment or
2 immobilization shall not occur concurrently with the
3 incarceration of the defendant. The impoundment or
4 immobilization order may be dismissed in accordance with
5 paragraph (e) or paragraph (f). At least 48 hours of
6 confinement must be consecutive.

7 (k) A person who owns but was not operating the vessel
8 when an offense under this section occurred may request an
9 evidentiary hearing to determine whether the impoundment or
10 immobilization should occur. If the court finds that the owner
11 was unaware of the defendant's prior conviction and sentence
12 under paragraph (a), paragraph (b), paragraph (c), or
13 paragraph (j) or if the court finds that there are other
14 mitigating circumstances that should allow the owner of the
15 vessel to secure the release of the vessel to the owner's
16 possession, the court may do so by dismissing the order of
17 impoundment or immobilization with or without cost to the
18 vessel owner.

19
20 For the purposes of this section, any conviction for a
21 violation of s. 316.193, a previous conviction for the
22 violation of former s. 316.1931, former s. 860.01, or former
23 s. 316.028, or a previous conviction outside this state for
24 driving under the influence, driving while intoxicated,
25 driving with an unlawful blood-alcohol level, driving with an
26 unlawful breath-alcohol level, or any other similar
27 alcohol-related or drug-related traffic offense, is also
28 considered a previous conviction for violation of this
29 section.

30 (11)(a) Notwithstanding s. 921.241, every judgment of
31 guilty with respect to any offense governed by this section

1 shall comply with this subsection. Each judgment shall be in
2 writing, signed by the judge, and recorded by the clerk of the
3 circuit court. The judge shall cause to be affixed to every
4 such written judgment of guilty, in open court and in the
5 presence of such judge, the fingerprints of the defendant
6 against whom such judgment is rendered. Such fingerprints
7 shall be affixed beneath the judge's signature to any such
8 judgment. Beneath such fingerprints shall be appended a
9 certificate in substantially the following form:

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11 "I hereby certify that the above and foregoing fingerprints
12 are of the defendant, (name) , and that they were placed
13 thereon by said defendant in my presence, in open court, this
14 the day of (month) (year)."

15
16 Such certificate shall be signed by the judge, whose signature
17 thereto shall be followed by the word "Judge."

18 (b) Any such written judgment of guilty, or a
19 certified copy thereof, shall be admissible in evidence in the
20 courts of this state as prima facie evidence that the
21 fingerprints appearing thereon and certified by the judge are
22 the fingerprints of the defendant against whom such judgment
23 of guilty was rendered.

24 (c) At the time the defendant's fingerprints are
25 taken, the judge shall also cause the defendant's social
26 security number to be taken. The defendant's social security
27 number shall be affixed to every written judgment of guilty,
28 in open court, in the presence of such judge, and at the time
29 the judgment is rendered. If the defendant is unable or
30 unwilling to provide his or her social security number, the

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1 reason for its absence shall be indicated on the written
2 judgment.

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

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 2296

9 This CS states the term of imprisonment for the fourth DUI or
10 BUI offense must be at least one day and one year. This will
11 clarify this term of incarceration is to be served in state
12 prison and not in county jail.
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