

## CHAMBER ACTION

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1 The Justice Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to driving and boating under the  
7 influence; amending s. 316.193, F.S.; providing for  
8 applicability of sanctions; requiring a specified period  
9 of imprisonment for a fourth or subsequent conviction of  
10 driving under the influence; prohibiting substitution of  
11 treatment alternatives in certain circumstances; requiring  
12 impoundment or immobilization of all vehicles owned by the  
13 defendant for a specified period; providing for dismissal  
14 of an impoundment order; requiring records of judgments of  
15 guilty to include fingerprints and social security  
16 numbers; amending s. 327.35, F.S.; requiring a specified  
17 period of imprisonment for a fourth or subsequent  
18 conviction of boating under the influence; prohibiting  
19 substitution of treatment alternatives in certain  
20 circumstances; requiring impoundment or immobilization of  
21 the vessel operated by or in the actual control of the  
22 defendant or any one vehicle registered in the defendant's  
23 name at the time of impoundment or immobilization for a

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24 | specified period; providing for dismissal of an order of  
 25 | impoundment or immobilization under certain circumstances  
 26 | upon request of an owner who was not operating the vessel;  
 27 | providing for dismissal of an impoundment order; requiring  
 28 | records of judgments of guilty to include fingerprints and  
 29 | social security numbers; providing applicability;  
 30 | providing an effective date.

31

32 | Be It Enacted by the Legislature of the State of Florida:

33

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

37 | 316.193 Driving under the influence; penalties.--

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

41 | (a) For the first conviction, the court shall place the  
 42 | defendant on probation ~~for a period not to exceed 1 year~~ and, as  
 43 | a condition of such probation, shall order the defendant to  
 44 | participate in public service or a community work project for a  
 45 | minimum of 50 hours; or the court may order instead, that any  
 46 | defendant pay an additional fine of \$10 for each hour of public  
 47 | service or community work otherwise required, if, after  
 48 | consideration of the residence or location of the defendant at  
 49 | the time public service or community work is required, payment  
 50 | of the fine is in the best interests of the state. ~~However, the~~  
 51 | ~~total period of probation and incarceration may not exceed 1~~

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52 | ~~year~~. The court must also, as a condition of probation, order  
53 | the impoundment or immobilization of the vehicle that was  
54 | operated by or in the actual control of the defendant or any one  
55 | vehicle registered in the defendant's name at the time of  
56 | impoundment or immobilization, for a period of 10 days or for  
57 | the unexpired term of any lease or rental agreement that expires  
58 | within 10 days. The impoundment or immobilization must not occur  
59 | concurrently with the incarceration of the defendant. The  
60 | impoundment or immobilization order may be dismissed in  
61 | accordance with paragraph (e), paragraph (f), paragraph (g), or  
62 | paragraph (h).

63 |       (b) For the second conviction for an offense that occurs  
64 | within a period of 5 years after the date of a prior conviction  
65 | for violation of this section, the court shall order  
66 | imprisonment for not less than 10 days. The court must also, as  
67 | a condition of probation, order the impoundment or  
68 | immobilization of all vehicles owned by the defendant at the  
69 | time of impoundment or immobilization, for a period of 30 days  
70 | or for the unexpired term of any lease or rental agreement that  
71 | expires within 30 days. The impoundment or immobilization must  
72 | not occur concurrently with the incarceration of the defendant  
73 | and must occur concurrently with the driver's license revocation  
74 | imposed under s. 322.28(2)(a)2. The impoundment or  
75 | immobilization order may be dismissed in accordance with  
76 | paragraph (e), paragraph (f), paragraph (g), or paragraph (h).  
77 | At least 48 hours of confinement must be consecutive.

78 |       (c) For the third ~~or subsequent~~ conviction for an offense  
79 | that occurs within a period of 10 years after the date of a

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80 | prior conviction for violation of this section, the court shall  
81 | order imprisonment for not less than 30 days. The court must  
82 | also, as a condition of probation, order the impoundment or  
83 | immobilization of all vehicles owned by the defendant at the  
84 | time of impoundment or immobilization, for a period of 90 days  
85 | or for the unexpired term of any lease or rental agreement that  
86 | expires within 90 days. The impoundment or immobilization shall  
87 | ~~must~~ not occur concurrently with the incarceration of the  
88 | defendant and shall ~~must~~ occur concurrently with the driver's  
89 | license revocation imposed under s. 322.28(2)(a)3. The  
90 | impoundment or immobilization order may be dismissed in  
91 | accordance with paragraph (e), paragraph (f), paragraph (g), or  
92 | paragraph (h). At least 48 hours of confinement must be  
93 | consecutive.

94 | (d) The court must at the time of sentencing the defendant  
95 | issue an order for the impoundment or immobilization of a  
96 | vehicle. Within 7 business days after the date that the court  
97 | issues the order of impoundment or immobilization, the clerk of  
98 | the court must send notice by certified mail, return receipt  
99 | requested, to the registered owner of each vehicle, if the  
100 | registered owner is a person other than the defendant, and to  
101 | each person of record claiming a lien against the vehicle.

102 | (e) A person who owns but was not operating the vehicle  
103 | when the offense occurred may submit to the court a police  
104 | report indicating that the vehicle was stolen at the time of the  
105 | offense or documentation of having purchased the vehicle after  
106 | the offense was committed from an entity other than the  
107 | defendant or the defendant's agent. If the court finds that the

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108 | vehicle was stolen or that the sale was not made to circumvent  
109 | the order and allow the defendant continued access to the  
110 | vehicle, the order must be dismissed and the owner of the  
111 | vehicle will incur no costs. If the court denies the request to  
112 | dismiss the order of impoundment or immobilization, the  
113 | petitioner may request an evidentiary hearing.

114 |       (f) A person who owns but was not operating the vehicle  
115 | when the offense occurred, and whose vehicle was stolen or who  
116 | purchased the vehicle after the offense was committed directly  
117 | from the defendant or the defendant's agent, may request an  
118 | evidentiary hearing to determine whether the impoundment or  
119 | immobilization should occur. If the court finds that either the  
120 | vehicle was stolen or the purchase was made without knowledge of  
121 | the offense, that the purchaser had no relationship to the  
122 | defendant other than through the transaction, and that such  
123 | purchase would not circumvent the order and allow the defendant  
124 | continued access to the vehicle, the order must be dismissed and  
125 | the owner of the vehicle will incur no costs.

126 |       (g) The court shall also dismiss the order of impoundment  
127 | or immobilization of the vehicle if the court finds that the  
128 | family of the owner of the vehicle has no other private or  
129 | public means of transportation.

130 |       (h) The court may also dismiss the order of impoundment or  
131 | immobilization of any vehicles that are owned by the defendant  
132 | but that are operated solely by the employees of the defendant  
133 | or any business owned by the defendant.

134 |       (i) All costs and fees for the impoundment or  
135 | immobilization, including the cost of notification, must be paid

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136 by the owner of the vehicle or, if the vehicle is leased or  
137 rented, by the person leasing or renting the vehicle, unless the  
138 impoundment or immobilization order is dismissed. All provisions  
139 of s. 713.78 shall apply.

140 (j) The person who owns a vehicle that is impounded or  
141 immobilized under this paragraph, or a person who has a lien of  
142 record against such a vehicle and who has not requested a review  
143 of the impoundment pursuant to paragraph (e), paragraph (f), or  
144 paragraph (g), may, within 10 days after the date that person  
145 has knowledge of the location of the vehicle, file a complaint  
146 in the county in which the owner resides to determine whether  
147 the vehicle was wrongfully taken or withheld from the owner or  
148 lienholder. Upon the filing of a complaint, the owner or  
149 lienholder may have the vehicle released by posting with the  
150 court a bond or other adequate security equal to the amount of  
151 the costs and fees for impoundment or immobilization, including  
152 towing or storage, to ensure the payment of such costs and fees  
153 if the owner or lienholder does not prevail. When the bond is  
154 posted and the fee is paid as set forth in s. 28.24, the clerk  
155 of the court shall issue a certificate releasing the vehicle. At  
156 the time of release, after reasonable inspection, the owner or  
157 lienholder must give a receipt to the towing or storage company  
158 indicating any loss or damage to the vehicle or to the contents  
159 of the vehicle.

160 (k) A defendant, in the court's discretion, may be  
161 required to serve all or any portion of a term of imprisonment  
162 to which the defendant has been sentenced pursuant to this  
163 section in a residential alcoholism treatment program or a

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164 residential drug abuse treatment program. Any time spent in such  
165 a program must be credited by the court toward the term of  
166 imprisonment.

167 (1) For the fourth or subsequent conviction under  
168 subparagraph (2)(b)3., the court shall order imprisonment for  
169 not less than 2 years. There shall be no substitution of this  
170 minimum mandatory term of imprisonment with treatment  
171 alternatives. However, the court may, with the consent of the  
172 state, order the defendant to serve a minimum mandatory sentence  
173 of 1 year and 1 day of incarceration followed by a period of  
174 probation during which the defendant must attend and  
175 successfully complete a residential alcohol treatment program, a  
176 residential drug abuse treatment program, or be placed on  
177 community control. The court must also, as a condition of  
178 probation, order the impoundment or immobilization of all  
179 vehicles owned by the defendant at the time of impoundment or  
180 immobilization for a period of 120 days or for the unexpired  
181 term of any lease or rental agreement that expires within 120  
182 days. The impoundment or immobilization shall not occur  
183 concurrently with the incarceration of the defendant and shall  
184 occur concurrently with the driver's license revocation imposed  
185 under s. 322.28. The impoundment or immobilization order may be  
186 dismissed in accordance with paragraph (e), paragraph (f),  
187 paragraph (g), or paragraph (h). At least 48 hours of  
188 confinement must be consecutive.

189  
190 For the purposes of this section, any conviction for a violation  
191 of s. 327.35; a previous conviction for the violation of former

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192 s. 316.1931, former s. 860.01, or former s. 316.028; or a  
193 previous conviction outside this state for driving under the  
194 influence, driving while intoxicated, driving with an unlawful  
195 blood-alcohol level, driving with an unlawful breath-alcohol  
196 level, or any other similar alcohol-related or drug-related  
197 traffic offense, is also considered a previous conviction for  
198 violation of this section. However, in satisfaction of the fine  
199 imposed pursuant to this section, the court may, upon a finding  
200 that the defendant is financially unable to pay either all or  
201 part of the fine, order that the defendant participate for a  
202 specified additional period of time in public service or a  
203 community work project in lieu of payment of that portion of the  
204 fine which the court determines the defendant is unable to pay.  
205 In determining such additional sentence, the court shall  
206 consider the amount of the unpaid portion of the fine and the  
207 reasonable value of the services to be ordered; however, the  
208 court may not compute the reasonable value of services at a rate  
209 less than the federal minimum wage at the time of sentencing.

210 (13)(a) Notwithstanding s. 921.241, every judgment of  
211 guilty with respect to any offense governed by this section  
212 shall comply with this subsection. Each judgment shall be in  
213 writing, signed by the judge, and recorded by the clerk of the  
214 circuit court. The judge shall cause to be affixed to every such  
215 written judgment of guilty, in open court and in the presence of  
216 such judge, the fingerprints of the defendant against whom such  
217 judgment is rendered. Such fingerprints shall be affixed beneath  
218 the judge's signature to any such judgment. Beneath such



219 | fingerprints shall be appended a certificate in substantially  
 220 | the following form:

221 |  
 222 | "I hereby certify that the above and foregoing fingerprints are  
 223 | of the defendant, (name) , and that they were placed thereon by  
 224 | said defendant in my presence, in open court, this the \_\_\_ day  
 225 | of (month) (year) ."

226 |  
 227 | Such certificate shall be signed by the judge, whose signature  
 228 | thereto shall be followed by the word "Judge."

229 | (b) Any such written judgment of guilty, or a certified  
 230 | copy thereof, shall be admissible in evidence in the courts of  
 231 | this state as prima facie evidence that the fingerprints  
 232 | appearing thereon and certified by the judge are the  
 233 | fingerprints of the defendant against whom such judgment of  
 234 | guilty was rendered.

235 | (c) At the time the defendant's fingerprints are taken,  
 236 | the judge shall also cause the defendant's social security  
 237 | number to be taken. The defendant's social security number shall  
 238 | be affixed to every written judgment of guilty, in open court,  
 239 | in the presence of such judge, and at the time the judgment is  
 240 | rendered. If the defendant is unable or unwilling to provide his  
 241 | or her social security number, the reason for its absence shall  
 242 | be indicated on the written judgment.

243 | Section 2. Paragraphs (a) and (c) of subsection (6) of  
 244 | section 327.35, Florida Statutes, are amended, paragraphs (j)  
 245 | and (k) are added to that subsection, and subsection (11) is  
 246 | added to that section, to read:

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247 327.35 Boating under the influence; penalties; "designated  
248 drivers".--

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

251 (a) For the first conviction, the court shall place the  
252 defendant on probation ~~for a period not to exceed 1 year~~ and, as  
253 a condition of such probation, shall order the defendant to  
254 participate in public service or a community work project for a  
255 minimum of 50 hours. The court must also, as a condition of  
256 probation, order the impoundment or immobilization of the vessel  
257 that was operated by or in the actual control of the defendant  
258 or any one vehicle registered in the defendant's name at the  
259 time of impoundment or immobilization, for a period of 10 days  
260 or for the unexpired term of any lease or rental agreement that  
261 expires within 10 days. The impoundment or immobilization must  
262 not occur concurrently with the incarceration of the defendant.  
263 The impoundment or immobilization order may be dismissed in  
264 accordance with paragraph (e) or paragraph (f). ~~The total period~~  
265 ~~of probation and incarceration may not exceed 1 year.~~

266 (c) For the third ~~or subsequent~~ conviction for an offense  
267 that occurs within a period of 10 years after the date of a  
268 prior conviction for violation of this section, the court shall  
269 order imprisonment for not less than 30 days. The court must  
270 also, as a condition of probation, order the impoundment or  
271 immobilization of the vessel that was operated by or in the  
272 actual control of the defendant or any one vehicle registered in  
273 the defendant's name at the time of impoundment or  
274 immobilization, for a period of 90 days or for the unexpired

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275 term of any lease or rental agreement that expires within 90  
276 days. The impoundment or immobilization shall ~~must~~ not occur  
277 concurrently with the incarceration of the defendant. The  
278 impoundment or immobilization order may be dismissed in  
279 accordance with paragraph (e) or paragraph (f). At least 48  
280 hours of confinement must be consecutive.

281 (j) For the fourth or subsequent conviction under  
282 subparagraph (2)(b)3., the court shall order imprisonment for  
283 not less than 2 years. There shall be no substitution of this  
284 minimum mandatory term of imprisonment with treatment  
285 alternatives. However, the court may, with the consent of the  
286 state, order the defendant to serve a minimum mandatory sentence  
287 of 1 year and 1 day of incarceration followed by a period of  
288 probation during which the defendant must attend and  
289 successfully complete a residential alcohol treatment program, a  
290 residential drug abuse treatment program, or be placed on  
291 community control. The court must also, as a condition of  
292 probation, order the impoundment or immobilization of the vessel  
293 that was operated by or in the actual control of the defendant  
294 or any one vehicle registered in the defendant's name at the  
295 time of impoundment or immobilization for a period of 120 days  
296 or for the unexpired term of any lease or rental agreement that  
297 expires within 120 days. The impoundment or immobilization shall  
298 not occur concurrently with the incarceration of the defendant.  
299 The impoundment or immobilization order may be dismissed in  
300 accordance with paragraph (e) or paragraph (f). At least 48  
301 hours of confinement must be consecutive.

302        (k) A person who owns but was not operating the vessel  
303 when an offense under this section occurred may request an  
304 evidentiary hearing to determine whether the impoundment or  
305 immobilization should occur. If the court finds that the owner  
306 was unaware of the defendant's prior conviction and sentence  
307 under paragraph (a), paragraph (b), paragraph (c), or paragraph  
308 (j) or if the court finds that there are other mitigating  
309 circumstances that should allow the owner of the vessel to  
310 secure the release of the vessel to the owner's possession, the  
311 court may do so by dismissing the order of impoundment or  
312 immobilization with or without cost to the vessel owner.

313  
314 For the purposes of this section, any conviction for a violation  
315 of s. 316.193, a previous conviction for the violation of former  
316 s. 316.1931, former s. 860.01, or former s. 316.028, or a  
317 previous conviction outside this state for driving under the  
318 influence, driving while intoxicated, driving with an unlawful  
319 blood-alcohol level, driving with an unlawful breath-alcohol  
320 level, or any other similar alcohol-related or drug-related  
321 traffic offense, is also considered a previous conviction for  
322 violation of this section.

323        (11) (a) Notwithstanding s. 921.241, every judgment of  
324 guilty with respect to any offense governed by this section  
325 shall comply with this subsection. Each judgment shall be in  
326 writing, signed by the judge, and recorded by the clerk of the  
327 circuit court. The judge shall cause to be affixed to every such  
328 written judgment of guilty, in open court and in the presence of  
329 such judge, the fingerprints of the defendant against whom such

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330 judgment is rendered. Such fingerprints shall be affixed beneath  
331 the judge's signature to any such judgment. Beneath such  
332 fingerprints shall be appended a certificate in substantially  
333 the following form:

334

335 "I hereby certify that the above and foregoing fingerprints are  
336 of the defendant, (name) , and that they were placed thereon by  
337 said defendant in my presence, in open court, this the \_\_\_\_\_ day  
338 of (month) \_\_\_\_\_ (year) ."

339

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

342 (b) Any such written judgment of guilty, or a certified  
343 copy thereof, shall be admissible in evidence in the courts of  
344 this state as prima facie evidence that the fingerprints  
345 appearing thereon and certified by the judge are the  
346 fingerprints of the defendant against whom such judgment of  
347 guilty was rendered.

348 (c) At the time the defendant's fingerprints are taken,  
349 the judge shall also cause the defendant's social security  
350 number to be taken. The defendant's social security number shall  
351 be affixed to every written judgment of guilty, in open court,  
352 in the presence of such judge, and at the time the judgment is  
353 rendered. If the defendant is unable or unwilling to provide his  
354 or her social security number, the reason for its absence shall  
355 be indicated on the written judgment.

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