

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

29 Be It Enacted by the Legislature of the State of Florida:

30

31 Section 1. This act may be cited as "The Barry and Sydney
 32 Mazer Act."

33 Section 2. Subsection (6) of section 316.193, Florida
 34 Statutes, is amended, and subsection (13) is added to that
 35 section, to read:

36 316.193 Driving under the influence; penalties.--

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

40 (a) For the first conviction, the court shall place the
 41 defendant on probation ~~for a period not to exceed 1 year~~ and, as
 42 a condition of such probation, shall order the defendant to
 43 participate in public service or a community work project for a
 44 minimum of 50 hours; or the court may order instead, that any
 45 defendant pay an additional fine of \$10 for each hour of public
 46 service or community work otherwise required, if, after
 47 consideration of the residence or location of the defendant at
 48 the time public service or community work is required, payment
 49 of the fine is in the best interests of the state. ~~However, the~~
 50 ~~total period of probation and incarceration may not exceed 1~~
 51 ~~year.~~ The court must also, as a condition of probation, order
 52 the impoundment or immobilization of the vehicle that was
 53 operated by or in the actual control of the defendant or any one
 54 vehicle registered in the defendant's name at the time of
 55 impoundment or immobilization, for a period of 10 days or for
 56 the unexpired term of any lease or rental agreement that expires

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57 | within 10 days. The impoundment or immobilization must not occur
58 | concurrently with the incarceration of the defendant. The
59 | impoundment or immobilization order may be dismissed in
60 | accordance with paragraph (e), paragraph (f), paragraph (g), or
61 | paragraph (h).

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

77 | (c) For the third ~~or subsequent~~ conviction ~~for an offense~~
78 | ~~that occurs within a period of 10 years after the date of a~~
79 | ~~prior conviction for violation of this section~~, the court shall
80 | order imprisonment for not less than 30 days. The court must
81 | also, as a condition of probation, order the impoundment or
82 | immobilization of all vehicles owned by the defendant at the
83 | time of impoundment or immobilization, for a period of 90 days
84 | or for the unexpired term of any lease or rental agreement that

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85 expires within 90 days. The impoundment or immobilization may
86 ~~must~~ not occur concurrently with the incarceration of the
87 defendant and shall ~~must~~ occur concurrently with the driver's
88 license revocation imposed under s. 322.28(2)(a)3. The
89 impoundment or immobilization order may be dismissed in
90 accordance with paragraph (e), paragraph (f), paragraph (g), or
91 paragraph (h). At least 48 hours of confinement must be
92 consecutive.

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

101 (e) A person who owns but was not operating the vehicle
102 when the offense occurred may submit to the court a police
103 report indicating that the vehicle was stolen at the time of the
104 offense or documentation of having purchased the vehicle after
105 the offense was committed from an entity other than the
106 defendant or the defendant's agent. If the court finds that the
107 vehicle was stolen or that the sale was not made to circumvent
108 the order and allow the defendant continued access to the
109 vehicle, the order must be dismissed and the owner of the
110 vehicle will incur no costs. If the court denies the request to
111 dismiss the order of impoundment or immobilization, the
112 petitioner may request an evidentiary hearing.

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

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

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

133 (i) All costs and fees for the impoundment or
134 immobilization, including the cost of notification, must be paid
135 by the owner of the vehicle or, if the vehicle is leased or
136 rented, by the person leasing or renting the vehicle, unless the
137 impoundment or immobilization order is dismissed. All provisions
138 of s. 713.78 shall apply.

139 (j) The person who owns a vehicle that is impounded or
140 immobilized under this paragraph, or a person who has a lien of

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

159 (k) A defendant, in the court's discretion, may be
160 required to serve all or any portion of a term of imprisonment
161 to which the defendant has been sentenced pursuant to this
162 section in a residential alcoholism treatment program or a
163 residential drug abuse treatment program. Any time spent in such
164 a program must be credited by the court toward the term of
165 imprisonment.

166 (l) For the fourth or subsequent conviction under
167 subparagraph (2)(b)3., the court shall order imprisonment for
168 not less than 2 years. Another punishment may not be substituted

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169 for this minimum mandatory term of imprisonment with treatment
170 alternatives. However, the court may, with the consent of the
171 state, order the defendant to serve a minimum mandatory sentence
172 of 1 year and 1 day of incarceration followed by a period of
173 probation during which the defendant must attend and
174 successfully complete a residential alcohol treatment program or
175 a residential drug abuse treatment program or be placed on
176 community control. The court must also, as a condition of
177 probation, order the impoundment or immobilization of all
178 vehicles owned by the defendant at the time of impoundment or
179 immobilization for a period of 120 days or for the unexpired
180 term of any lease or rental agreement that expires within 120
181 days. The impoundment or immobilization may not occur
182 concurrently with the incarceration of the defendant and shall
183 occur concurrently with the driver's license revocation imposed
184 under s. 322.28. The impoundment or immobilization order may be
185 dismissed in accordance with paragraph (e), paragraph (f),
186 paragraph (g), or paragraph (h). At least 48 hours of
187 confinement must be consecutive.

188
189 For the purposes of this section, any conviction for a violation
190 of s. 327.35; a previous conviction for the violation of former
191 s. 316.1931, former s. 860.01, or former s. 316.028; or a
192 previous conviction outside this state for driving under the
193 influence, driving while intoxicated, driving with an unlawful
194 blood-alcohol level, driving with an unlawful breath-alcohol
195 level, or any other similar alcohol-related or drug-related
196 traffic offense, is also considered a previous conviction for

197 violation of this section. However, in satisfaction of the fine
 198 imposed pursuant to this section, the court may, upon a finding
 199 that the defendant is financially unable to pay either all or
 200 part of the fine, order that the defendant participate for a
 201 specified additional period of time in public service or a
 202 community work project in lieu of payment of that portion of the
 203 fine which the court determines the defendant is unable to pay.
 204 In determining such additional sentence, the court shall
 205 consider the amount of the unpaid portion of the fine and the
 206 reasonable value of the services to be ordered; however, the
 207 court may not compute the reasonable value of services at a rate
 208 less than the federal minimum wage at the time of sentencing.

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

220
 221 "I hereby certify that the above and foregoing fingerprints
 222 are of the defendant, (name) , and that they were placed
 223 thereon by said defendant in my presence, in open court,
 224 this the _____ day of (month) _____ (year) ."

225
226 Such certificate shall be signed by the judge, whose signature
227 thereto shall be followed by the word "Judge."

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

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

241 Section 3. Paragraphs (a) and (c) of subsection (6) of
242 section 327.35, Florida Statutes, are amended, paragraphs (j)
243 and (k) are added to that subsection, and subsection (11) is
244 added to that section, to read:

245 327.35 Boating under the influence; penalties; "designated
246 drivers".--

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

249 (a) For the first conviction, the court shall place the
250 defendant on probation ~~for a period not to exceed 1 year~~ and, as
251 a condition of such probation, shall order the defendant to
252 participate in public service or a community work project for a

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

264 (c) For the third ~~or subsequent~~ conviction ~~for an offense~~
265 ~~that occurs within a period of 10 years after the date of a~~
266 ~~prior conviction for violation of this section~~, the court shall
267 order imprisonment for not less than 30 days. The court must
268 also, as a condition of probation, order the impoundment or
269 immobilization of the vessel that was operated by or in the
270 actual control of the defendant or any one vehicle registered in
271 the defendant's name at the time of impoundment or
272 immobilization, for a period of 90 days or for the unexpired
273 term of any lease or rental agreement that expires within 90
274 days. The impoundment or immobilization may ~~must~~ not occur
275 concurrently with the incarceration of the defendant. The
276 impoundment or immobilization order may be dismissed in
277 accordance with paragraph (e) or paragraph (f). At least 48
278 hours of confinement must be consecutive.

279 (j) For the fourth or subsequent conviction under
280 subparagraph (2)(b)3., the court shall order imprisonment for

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281 not less than 2 years. Another punishment may not be substituted
282 for this minimum mandatory term of imprisonment with treatment
283 alternatives. However, the court may, with the consent of the
284 state, order the defendant to serve a minimum mandatory sentence
285 of 1 year and 1 day of incarceration followed by a period of
286 probation during which the defendant must attend and
287 successfully complete a residential alcohol treatment program or
288 a residential drug abuse treatment program or be placed on
289 community control. The court must also, as a condition of
290 probation, order the impoundment or immobilization of the vessel
291 that was operated by or in the actual control of the defendant
292 or any one vehicle registered in the defendant's name at the
293 time of impoundment or immobilization for a period of 120 days
294 or for the unexpired term of any lease or rental agreement that
295 expires within 120 days. The impoundment or immobilization may
296 not occur concurrently with the incarceration of the defendant.
297 The impoundment or immobilization order may be dismissed in
298 accordance with paragraph (e) or paragraph (f). At least 48
299 hours of confinement must be consecutive.

300 (k) A person who owns but was not operating the vessel
301 when an offense under this section occurred may request an
302 evidentiary hearing to determine whether the impoundment or
303 immobilization should occur. If the court finds that the owner
304 was unaware of the defendant's prior conviction and sentence
305 under paragraph (a), paragraph (b), paragraph (c), or paragraph
306 (j) or if the court finds that there are other mitigating
307 circumstances that should allow the owner of the vessel to
308 secure the release of the vessel to the owner's possession, the

309 court may do so by dismissing the order of impoundment or
 310 immobilization with or without cost to the vessel owner.

311
 312 For the purposes of this section, any conviction for a violation
 313 of s. 316.193, a previous conviction for the violation of former
 314 s. 316.1931, former s. 860.01, or former s. 316.028, or a
 315 previous conviction outside this state for driving under the
 316 influence, driving while intoxicated, driving with an unlawful
 317 blood-alcohol level, driving with an unlawful breath-alcohol
 318 level, or any other similar alcohol-related or drug-related
 319 traffic offense, is also considered a previous conviction for
 320 violation of this section.

321 (11) (a) Notwithstanding s. 921.241, every judgment of
 322 guilty with respect to any offense governed by this section
 323 shall comply with this subsection. Each judgment shall be in
 324 writing, signed by the judge, and recorded by the clerk of the
 325 circuit court. The judge shall cause to be affixed to every such
 326 written judgment of guilty, in open court and in the presence of
 327 such judge, the fingerprints of the defendant against whom such
 328 judgment is rendered. Such fingerprints shall be affixed beneath
 329 the judge's signature to any such judgment. Beneath such
 330 fingerprints shall be appended a certificate in substantially
 331 the following form:

332
 333 "I hereby certify that the above and foregoing fingerprints
 334 are of the defendant, (name) , and that they were placed
 335 thereon by said defendant in my presence, in open court,
 336 this the _____ day of (month) _____ (year) ."

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337
338 Such certificate shall be signed by the judge, whose signature
339 thereto shall be followed by the word "Judge."

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

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

353 Section 4. This act shall take effect October 1, 2007.