

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Transportation Committee

BILL: SB 1616

INTRODUCER: Senator Aronberg

SUBJECT: Driving/Boating Under the Influence

DATE: March 15, 2007      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/2 amendments
2.			CJ	
3.			JU	
4.			JA	
5.				
6.				

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

Senate Bill 1616 will require the imposition of a two year minimum mandatory sentence for a fourth or subsequent driving under the influence (DUI) or boating under the influence (BUI) conviction, regardless of when the prior conviction occurred. The bill further provides there shall be no substitution of this minimum mandatory term of imprisonment with treatment alternatives but the court may, with the consent of the state, order the defendant to serve a minimum mandatory sentence of 1 year and 1 day of incarceration followed by a period of probation during which the defendant must attend and successfully complete a residential alcohol treatment program or a residential drug abuse treatment program or be placed on community control. (Currently, a court must order imprisonment for not less than 30 days for a fourth or subsequent DUI or BUI offense that occurs within 10 years of a prior conviction. There is no minimum mandatory term of imprisonment required if the fourth or subsequent DUI or BUI does not occur within 10 years of a prior conviction.)

The bill requires for a fourth or subsequent DUI (regardless of when the prior conviction occurred), the judge must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 120 days or for the unexpired term of any lease or rental agreement that expires within 120 days. For a fourth or subsequent BUI, the court must order impoundment or immobilization of the vessel operated by

or in the actual control of the defendant or any one vehicle registered in the defendant's name for the same period of time as for a DUI offense. The bill provides the court may dismiss the order in certain circumstances. (Currently, for a fourth or subsequent DUI committed within 10 years of a prior conviction, the judge must order, as a condition of probation, the impoundment or immobilization of all vehicles owned by the defendant for 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days.)

The bill also requires every judgment of guilty for a DUI or BUI offense must be in writing, signed by the judge, and recorded by the clerk of the circuit court. The fingerprints of the defendant must be affixed to the judgment and the judge must certify the fingerprints were placed on the judgment by the defendant in open court. The bill also requires the defendant's social security number to be placed on the judgment. The written judgment of guilty made in compliance with this provision, or a certified copy, will be admissible in court as prima facie evidence the fingerprints are the fingerprints of the defendant against whom the judgment of guilty was rendered.

The Criminal Justice Impact Conference has not met this Session; however, the conference's draft proposal estimates the bill will increase the inmate population by 397 inmates by the third year of implementation. See Government Sector Impact for details.

This bill substantially amends ss. 316.193 and 327.35 of the Florida Statutes.

## II. Present Situation:

### DUI

The offense of DUI<sup>1</sup> is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

The DUI offense is punishable as follows:<sup>2</sup>

- For a first conviction, by a fine of not less than \$250 or more than \$500 and by imprisonment for not more than 6 months.
- For a second conviction, by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense

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<sup>1</sup>s. 316.193(1), F.S.

<sup>2</sup>s. 316.193(2), F.S.

committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.<sup>3</sup>

- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than \$1000 or more than \$2500 and by imprisonment for not more than 12 months.<sup>4</sup>

A third conviction for an offense occurring within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail<sup>5</sup> and up to five years in prison and a fine of up to \$1000.<sup>6</sup> A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than \$1000 or more than \$5000.<sup>7</sup> If the fourth or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.<sup>8</sup>

At the judge's discretion, a defendant may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced in a residential alcoholism treatment program or a residential drug abuse treatment program.<sup>9</sup>

Current law also requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles as follows:

- For a first DUI conviction, the court must order the impoundment or immobilization of the vehicle used in the DUI offense or any one vehicle registered in the defendant's name at the time of impoundment or immobilization for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant.
- For a second DUI conviction within 5 years of the date of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days.
- For a third or subsequent DUI that occurs within 10 years of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days.<sup>10</sup>

The court can dismiss the order of impoundment or immobilization in specified circumstances.<sup>11</sup>

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<sup>3</sup>s. 316.193(6)(b), F.S.

<sup>4</sup>s. 316.193(2)(b)2, F.S.

<sup>5</sup>s. 316.193(6)(c), F.S.

<sup>6</sup>s. 316.193(2)(b)1, F.S.

<sup>7</sup>s. 316.193(2)(b)3., F.S. Additionally, a person who has been convicted of DUI may be required to place an ignition interlock device on his or her vehicle. Section 316.193, F.S., also increases sanctions for DUI which results in damage to the property or person of another, serious bodily injury or the death of another person. s. 316.193(3)(c), F.S.

<sup>8</sup>s. 316.193(6)(c), F.S.

<sup>9</sup>s. 316.193(6)(k), F.S.

<sup>10</sup> See s. 316.193(6)(a), (b) and (c), F.S.

<sup>11</sup> See s. 316.193(6)(e),(f),(g) and (h), F.S.

The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant and must occur concurrently with the driver's license revocation imposed under s. 322.28(2)(a), F.S.

This section requires the revocation of a person's driver's license for not less than 180 days and no more than 1 year for a first DUI conviction;<sup>12</sup> for not less than 5 years for a second conviction for an offense that occurs within 5 years after the date of a prior conviction;<sup>13</sup> and for not less than 10 years for a third conviction for an offense that occurs within 10 years of a prior conviction.<sup>14</sup> A fourth DUI conviction results in permanent revocation of a person's driving privilege.<sup>15</sup>

### **BUI**

Section 327.35, F.S., establishes the offense of BUI which has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of DUI. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute. For a third or subsequent BUI within 10 years of a prior conviction, the court must, as a condition of probation, order the impoundment or immobilization of the vessel operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days.

## **III. Effect of Proposed Changes:**

### **Short Title**

The bill provides this act may be cited as "The Barry and Sydney Mazer Act."

### **Sentencing**

(Currently for a first conviction of DUI or BUI, the court shall place the defendant on probation for a period not to exceed one year. In addition, the total period of probation and incarceration may not exceed one year for a first conviction of DUI or BUI). This bill amends the DUI and BUI statutes to delete those provisions specifying probation may not exceed one year. The bill requires the court to place the defendant on probation for a first conviction of DUI or BUI, without imposing a specific probation time period.

Also the bill amends the DUI and BUI statutes relating to third convictions. (Currently, a third conviction for an offense occurring within 10 years of a prior conviction is punishable by no less than 30 days in jail). The bill deletes the provision stipulating the offense must have occurred within a period of 10 years after the date of a prior conviction.

The bill amends the DUI and BUI statutes to provide for a fourth or subsequent conviction, the court must order imprisonment for not less than 2 years, regardless of when a prior conviction occurred. The bill further provides there shall be no substitution of this minimum mandatory term of imprisonment with treatment alternatives but the court may, with the consent of the state, order the defendant to serve a minimum mandatory sentence of 1 year and 1 day of incarceration

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<sup>12</sup>s. 322.28(2)(a)1., F.S.

<sup>13</sup>s. 322.28(2)(a)2., F.S.

<sup>14</sup>s. 322.28(2)(a)3., F.S.

<sup>15</sup>s. 322.28(2)(e), F.S.

followed by a period of probation during which the defendant must attend and successfully complete a residential alcohol treatment program, a residential drug abuse treatment program, or be placed on community control. (Currently there is no mandatory minimum term of imprisonment for a fourth or subsequent DUI or BUI unless it occurs within 10 years of a prior DUI or BUI in which case, a 30 day minimum mandatory sentence must be imposed.)

According to the Department of Highway Safety and Motor Vehicles (DHSMV), as of March 15, 2007, there are 34,239 drivers who have had four or more convictions during his or her lifetime. In addition, there were 1,300 individuals who received his or her fourth or more DUI revocations in 2006.

### **Impoundment of Vehicle or Vessel**

The bill provides as a condition of probation for a fourth or subsequent DUI conviction, regardless of when a prior conviction occurred, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 120 days or for the unexpired term of any lease or rental agreement that expires within 120 days. In conformity with current law, the bill provides the impoundment or immobilization may not occur concurrently with any incarceration and shall occur concurrently with the revocation of the offender's driver's license. The judge will be permitted to dismiss the impoundment or immobilization in accordance with current law. In addition, the bill amends the DUI and BUI statutes relating to third convictions. The bill deletes the provision stipulating the offense must have occurred within a period of 10 years after the date of a prior conviction. (Currently, for a third or subsequent DUI that occurs within 10 years of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days.)

For a fourth or subsequent BUI, the court must order impoundment or immobilization of the vessel operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name for the same period of time as for a DUI offense. The bill provides a person who owns but was not operating the vessel when an offense occurred may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds the owner was unaware of the defendant's prior conviction and sentence or if the court finds there are other mitigating circumstances that should allow the owner of the vessel to secure the release of the vessel to the owner's possession, the court may do so by dismissing the order of impoundment or immobilization with or without cost to the vessel owner.

### **Judgment**

The bill also provides every judgment of guilty for a DUI or BUI offense must be in writing, signed by the judge, and recorded by the clerk of the circuit court. The judge must cause to be affixed to the judgment the fingerprints of the defendant against whom the judgment is rendered. The bill sets the wording of a certificate to be signed by the judge certifying the fingerprints were placed on the judgment by the defendant in open court. The bill also requires the defendant's social security number to be placed on the judgment. The written judgment of guilty made in compliance with this section, or a certified copy, will be admissible in court as prima facie

evidence that the fingerprints are the fingerprints of the defendant against whom the judgment of guilty was rendered.<sup>16</sup>

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not met this Session, to consider the prison bed impact of SB 1616 and HB 1243, on the Department of Corrections. However, the conference’s draft proposal estimates the net impact to be as follows:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2007-2008	45	45	\$445,253	\$12,740,000	\$13,185,253	\$13,185,253
2008-2009	245	200	\$2,932,480	\$8,251,776	\$11,184,256	\$24,369,509
2009-2010	397	152	\$6,621,909	\$0	\$6,621,909	\$30,991,418
2010-2011	397	0	\$8,345,337	\$0	\$8,345,337	\$39,336,755
2011-2012	397	0	\$8,512,077	\$0	\$8,512,077	\$47,848,832
<b>Total</b>	<b>397</b>	<b>397</b>	<b>\$26,857,056</b>	<b>\$20,991,776</b>	<b>\$47,848,832</b>	<b>\$47,848,832</b>

Notes: Analysis assumes that there will be a 50% increase in the incarceration rate for felony DUI (4th or subsequent conviction), increasing from 42.4% to 63.6%.

Additional offenders sentenced to prison were assumed to serve 24 months.

<sup>16</sup> This provision is substantially similar to s. 921.241, F.S., relating to judgments of guilty for felony offenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## VIII. Summary of Amendments:

**Barcode 420932 by Transportation:**

Deletes the requirement in the bill that the defendant's social security number be placed on the judgment relating to a DUI offense.

**Barcode 521740 by Transportation:**

Deletes the requirement in the bill that the defendant's social security number be placed on the judgment relating to a BUI offense.

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