

By Senator Aronberg

27-886-07

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

1 records of judgments of guilty to include
2 fingerprints and social security numbers;
3 providing an effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

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

9 Section 2. Subsection (6) of section 316.193, Florida
10 Statutes, is amended, and subsection (13) is added to that
11 section, to read:

12 316.193 Driving under the influence; penalties.--

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

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

1 | in the defendant's name at the time of impoundment or
2 | immobilization, for a period of 10 days or for the unexpired
3 | term of any lease or rental agreement that expires within 10
4 | days. The impoundment or immobilization must not occur
5 | concurrently with the incarceration of the defendant. The
6 | impoundment or immobilization order may be dismissed in
7 | accordance with paragraph (e), paragraph (f), paragraph (g),
8 | or paragraph (h).

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

25 | (c) For the third ~~or subsequent~~ conviction ~~for an~~
26 | ~~offense that occurs within a period of 10 years after the date~~
27 | ~~of a prior conviction for violation of this section~~, the court
28 | shall order imprisonment for not less than 30 days. The court
29 | must also, as a condition of probation, order the impoundment
30 | or immobilization of all vehicles owned by the defendant at
31 | the time of impoundment or immobilization, ~~7~~ for a period of 90

1 days or for the unexpired term of any lease or rental
2 agreement that expires within 90 days. The impoundment or
3 immobilization may ~~must~~ not occur concurrently with the
4 incarceration of the defendant and shall ~~must~~ occur
5 concurrently with the driver's license revocation imposed
6 under s. 322.28(2)(a)3. The impoundment or immobilization
7 order may be dismissed in accordance with paragraph (e),
8 paragraph (f), paragraph (g), or paragraph (h). At least 48
9 hours of confinement must be consecutive.

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

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

31

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

14 (g) The court shall also dismiss the order of
15 impoundment or immobilization of the vehicle if the court
16 finds that the family of the owner of the vehicle has no other
17 private or public means of transportation.

18 (h) The court may also dismiss the order of
19 impoundment or immobilization of any vehicles that are owned
20 by the defendant but that are operated solely by the employees
21 of the defendant or any business owned by the defendant.

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

28 (j) The person who owns a vehicle that is impounded or
29 immobilized under this paragraph, or a person who has a lien
30 of record against such a vehicle and who has not requested a
31 review of the impoundment pursuant to paragraph (e), paragraph

1 (f), or paragraph (g), may, within 10 days after the date that
2 person has knowledge of the location of the vehicle, file a
3 complaint in the county in which the owner resides to
4 determine whether the vehicle was wrongfully taken or withheld
5 from the owner or lienholder. Upon the filing of a complaint,
6 the owner or lienholder may have the vehicle released by
7 posting with the court a bond or other adequate security equal
8 to the amount of the costs and fees for impoundment or
9 immobilization, including towing or storage, to ensure the
10 payment of such costs and fees if the owner or lienholder does
11 not prevail. When the bond is posted and the fee is paid as
12 set forth in s. 28.24, the clerk of the court shall issue a
13 certificate releasing the vehicle. At the time of release,
14 after reasonable inspection, the owner or lienholder must give
15 a receipt to the towing or storage company indicating any loss
16 or damage to the vehicle or to the contents of the vehicle.

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

24 (1) For the fourth or subsequent conviction under
25 subparagraph (2)(b)3., the court shall order imprisonment for
26 not less than 2 years. Another punishment may not be
27 substituted for this minimum mandatory term of imprisonment
28 with treatment alternatives. However, the court may, with the
29 consent of the state, order the defendant to serve a minimum
30 mandatory sentence of 1 year and 1 day of incarceration
31 followed by a period of probation during which the defendant

1 must attend and successfully complete a residential alcohol
2 treatment program or a residential drug abuse treatment
3 program or be placed on community control. The court must
4 also, as a condition of probation, order the impoundment or
5 immobilization of all vehicles owned by the defendant at the
6 time of impoundment or immobilization for a period of 120 days
7 or for the unexpired term of any lease or rental agreement
8 that expires within 120 days. The impoundment or
9 immobilization may not occur concurrently with the
10 incarceration of the defendant and shall occur concurrently
11 with the driver's license revocation imposed under s. 322.28.
12 The impoundment or immobilization order may be dismissed in
13 accordance with paragraph (e), paragraph (f), paragraph (g),
14 or paragraph (h). At least 48 hours of confinement must be
15 consecutive.

16
17 For the purposes of this section, any conviction for a
18 violation of s. 327.35; a previous conviction for the
19 violation of former s. 316.1931, former s. 860.01, or former
20 s. 316.028; or a previous conviction outside this state for
21 driving under the influence, driving while intoxicated,
22 driving with an unlawful blood-alcohol level, driving with an
23 unlawful breath-alcohol level, or any other similar
24 alcohol-related or drug-related traffic offense, is also
25 considered a previous conviction for violation of this
26 section. However, in satisfaction of the fine imposed pursuant
27 to this section, the court may, upon a finding that the
28 defendant is financially unable to pay either all or part of
29 the fine, order that the defendant participate for a specified
30 additional period of time in public service or a community
31 work project in lieu of payment of that portion of the fine

1 | which the court determines the defendant is unable to pay. In
2 | determining such additional sentence, the court shall consider
3 | the amount of the unpaid portion of the fine and the
4 | reasonable value of the services to be ordered; however, the
5 | court may not compute the reasonable value of services at a
6 | rate less than the federal minimum wage at the time of
7 | sentencing.

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

19 |
20 | "I hereby certify that the above and foregoing
21 | fingerprints are of the defendant, (name) ,
22 | and that they were placed thereon by said
23 | defendant in my presence, in open court, this
24 | the day of (month) (year) ."

25 |
26 | Such certificate shall be signed by the judge, whose signature
27 | thereto shall be followed by the word "Judge."

28 | (b) Any such written judgment of guilty, or a
29 | certified copy thereof, is admissible in evidence in the
30 | courts of this state as prima facie evidence that the
31 | fingerprints appearing thereon and certified by the judge are

1 the fingerprints of the defendant against whom such judgment
2 of guilty was rendered.

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

12 Section 3. Paragraphs (a) and (c) of subsection (6) of
13 section 327.35, Florida Statutes, are amended, paragraphs (j)
14 and (k) are added to that subsection, and subsection (11) is
15 added to that section, to read:

16 327.35 Boating under the influence; penalties;
17 "designated drivers".--

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

21 (a) For the first conviction, the court shall place
22 the defendant on probation ~~for a period not to exceed 1 year~~
23 and, as a condition of such probation, shall order the
24 defendant to participate in public service or a community work
25 project for a minimum of 50 hours. The court must also, as a
26 condition of probation, order the impoundment or
27 immobilization of the vessel 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) or paragraph (f). ~~The total~~
5 ~~period of probation and incarceration may not exceed 1 year.~~

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

21 (j) For the fourth or subsequent conviction under
22 subparagraph (2)(b)3., the court shall order imprisonment for
23 not less than 2 years. Another punishment may not be
24 substituted for this minimum mandatory term of imprisonment
25 with treatment alternatives. However, the court may, with the
26 consent of the state, order the defendant to serve a minimum
27 mandatory sentence of 1 year and 1 day of incarceration
28 followed by a period of probation during which the defendant
29 must attend and successfully complete a residential alcohol
30 treatment program or a residential drug abuse treatment
31 program or be placed on community control. The court must

1 also, as a 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 120 days or for the unexpired
6 term of any lease or rental agreement that expires within 120
7 days. The impoundment or immobilization may 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). At least 48
11 hours of confinement must be consecutive.

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

24
25 For the purposes of this section, any conviction for a
26 violation of s. 316.193, a previous conviction for the
27 violation of former s. 316.1931, former s. 860.01, or former
28 s. 316.028, or a previous conviction outside this state for
29 driving under the influence, driving while intoxicated,
30 driving with an unlawful blood-alcohol level, driving with an
31 unlawful breath-alcohol level, or any other similar

1 alcohol-related or drug-related traffic offense, is also
2 considered a previous conviction for violation of this
3 section.

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

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

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

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

30 (c) At the time the defendant's fingerprints are
31 taken, the judge shall also cause the defendant's social

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

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

9
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11 SENATE SUMMARY

12 Provides for applicability of sanctions for driving or
13 boating under the influence. Requires a specified period
14 of imprisonment for a fourth or subsequent conviction of
15 driving under the influence. Prohibits substitution of
16 treatment alternatives in certain circumstances. Requires
17 impoundment or immobilization of all vehicles owned by
18 the defendant for a specified period. Provides for
19 dismissal of an impoundment order. Requires that records
20 of judgments of guilty include fingerprints and social
21 security numbers. Requires a specified period of
22 imprisonment for a fourth or subsequent conviction of
23 boating under the influence. Prohibits substitution of
24 treatment alternatives in certain circumstances. Requires
25 impoundment or immobilization of the vessel operated by
26 or in the actual control of the defendant or any one
27 vehicle registered in the defendant's name at the time of
28 impoundment or immobilization for a specified period.
29 Provides for dismissal of an order of impoundment or
30 immobilization under certain circumstances upon request
31 of an owner who was not operating the vessel. Provides
for dismissal of an impoundment order. Requires that
records of judgments of guilty include fingerprints and
social security numbers.