

By Senator Aronberg

27-00569-08

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1 A bill to be entitled

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

28  
29 Be It Enacted by the Legislature of the State of Florida:

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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 of  
49 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 the  
52 impoundment or immobilization of the vehicle that was operated by  
53 or in the actual control of the defendant or any one vehicle  
54 registered in the defendant's name at the time of impoundment or  
55 immobilization, for a period of 10 days or for the unexpired term  
56 of any lease or rental agreement that expires within 10 days. The  
57 impoundment or immobilization must not occur concurrently with  
58 the incarceration of the defendant. The impoundment or

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59 immobilization order may be dismissed in accordance with  
60 paragraph (e), paragraph (f), paragraph (g), or paragraph (h).

61 (b) For the second conviction for an offense that occurs  
62 within a period of 5 years after the date of a prior conviction  
63 for violation of this section, the court shall order imprisonment  
64 for not less than 10 days. The court must also, as a condition of  
65 probation, order the impoundment or immobilization of all  
66 vehicles owned by the defendant at the time of impoundment or  
67 immobilization, for a period of 30 days or for the unexpired term  
68 of any lease or rental agreement that expires within 30 days. The  
69 impoundment or immobilization must not occur concurrently with  
70 the incarceration of the defendant and must occur concurrently  
71 with the driver's license revocation imposed under s.

72 322.28(2)(a)2. The impoundment or immobilization order may be  
73 dismissed in accordance with paragraph (e), paragraph (f),  
74 paragraph (g), or paragraph (h). At least 48 hours of confinement  
75 must be consecutive.

76 (c) For the third ~~or subsequent~~ conviction ~~for an offense~~  
77 ~~that occurs within a period of 10 years after the date of a prior~~  
78 ~~conviction for violation of this section~~, the court shall order  
79 imprisonment for not less than 30 days. The court must also, as a  
80 condition of probation, order the impoundment or immobilization  
81 of all vehicles owned by the defendant at the time of impoundment  
82 or immobilization, ~~7~~ for a period of 90 days or for the unexpired  
83 term of any lease or rental agreement that expires within 90  
84 days. The impoundment or immobilization may ~~must~~ not occur  
85 concurrently with the incarceration of the defendant and shall  
86 ~~must~~ occur concurrently with the driver's license revocation  
87 imposed under s. 322.28(2)(a)3. The impoundment or immobilization

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88 order may be dismissed in accordance with paragraph (e),  
89 paragraph (f), paragraph (g), or paragraph (h). At least 48 hours  
90 of confinement must be consecutive.

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

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

111 (f) A person who owns but was not operating the vehicle  
112 when the offense occurred, and whose vehicle was stolen or who  
113 purchased the vehicle after the offense was committed directly  
114 from the defendant or the defendant's agent, may request an  
115 evidentiary hearing to determine whether the impoundment or  
116 immobilization should occur. If the court finds that either the

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117 | vehicle was stolen or the purchase was made without knowledge of  
118 | the offense, that the purchaser had no relationship to the  
119 | defendant other than through the transaction, and that such  
120 | purchase would not circumvent the order and allow the defendant  
121 | continued access to the vehicle, the order must be dismissed and  
122 | the owner of the vehicle will incur no costs.

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

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

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

137 |       (j) The person who owns a vehicle that is impounded or  
138 | immobilized under this paragraph, or a person who has a lien of  
139 | record against such a vehicle and who has not requested a review  
140 | of the impoundment pursuant to paragraph (e), paragraph (f), or  
141 | paragraph (g), may, within 10 days after the date that person has  
142 | knowledge of the location of the vehicle, file a complaint in the  
143 | county in which the owner resides to determine whether the  
144 | vehicle was wrongfully taken or withheld from the owner or  
145 | lienholder. Upon the filing of a complaint, the owner or

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146 lienholder may have the vehicle released by posting with the  
147 court a bond or other adequate security equal to the amount of  
148 the costs and fees for impoundment or immobilization, including  
149 towing or storage, to ensure the payment of such costs and fees  
150 if the owner or lienholder does not prevail. When the bond is  
151 posted and the fee is paid as set forth in s. 28.24, the clerk of  
152 the court shall issue a certificate releasing the vehicle. At the  
153 time of release, after reasonable inspection, the owner or  
154 lienholder must give a receipt to the towing or storage company  
155 indicating any loss or damage to the vehicle or to the contents  
156 of the vehicle.

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

163 (l) For the fourth or subsequent conviction under  
164 subparagraph (2)(b)3., the court shall order imprisonment for not  
165 less than 2 years. Another punishment may not be substituted for  
166 this minimum mandatory term of imprisonment with treatment  
167 alternatives. However, the court may, with the consent of the  
168 state, order the defendant to serve a minimum mandatory sentence  
169 of 1 year and 1 day of incarceration followed by a period of  
170 probation during which the defendant must attend and successfully  
171 complete a residential alcohol treatment program or a residential  
172 drug abuse treatment program or be placed on community control.  
173 The court must also, as a condition of probation, order the  
174 impoundment or immobilization of all vehicles owned by the

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175 defendant at the time of impoundment or immobilization for a  
176 period of 120 days or for the unexpired term of any lease or  
177 rental agreement that expires within 120 days. The impoundment or  
178 immobilization may not occur concurrently with the incarceration  
179 of the defendant and shall occur concurrently with the driver's  
180 license revocation imposed under s. 322.28. The impoundment or  
181 immobilization order may be dismissed in accordance with  
182 paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At  
183 least 48 hours of confinement must be consecutive.

184  
185 For the purposes of this section, any conviction for a violation  
186 of s. 327.35; a previous conviction for the violation of former  
187 s. 316.1931, former s. 860.01, or former s. 316.028; or a  
188 previous conviction outside this state for driving under the  
189 influence, driving while intoxicated, driving with an unlawful  
190 blood-alcohol level, driving with an unlawful breath-alcohol  
191 level, or any other similar alcohol-related or drug-related  
192 traffic offense, is also considered a previous conviction for  
193 violation of this section. However, in satisfaction of the fine  
194 imposed pursuant to this section, the court may, upon a finding  
195 that the defendant is financially unable to pay either all or  
196 part of the fine, order that the defendant participate for a  
197 specified additional period of time in public service or a  
198 community work project in lieu of payment of that portion of the  
199 fine which the court determines the defendant is unable to pay.  
200 In determining such additional sentence, the court shall consider  
201 the amount of the unpaid portion of the fine and the reasonable  
202 value of the services to be ordered; however, the court may not  
203 compute the reasonable value of services at a rate less than the

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204 federal minimum wage at the time of sentencing.

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

216  
217 "I hereby certify that the above and foregoing  
218 fingerprints are of the defendant, (name) , and that  
219 they were placed thereon by said defendant in my  
220 presence, in open court, this the \_\_\_\_\_ day of  
221 (month) \_\_\_\_\_ (year) ."  
222

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

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

230 Section 3. Paragraphs (a) and (c) of subsection (6) of  
231 section 327.35, Florida Statutes, are amended, paragraphs (j)  
232 and (k) are added to that subsection, and subsection (11) is



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233 added to that section, to read:

234 327.35 Boating under the influence; penalties;  
235 "designated drivers".--

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

238 (a) For the first conviction, the court shall place the  
239 defendant on probation ~~for a period not to exceed 1 year~~ and,  
240 as a condition of such probation, shall order the defendant to  
241 participate in public service or a community work project for a  
242 minimum of 50 hours. The court must also, as a condition of  
243 probation, order the impoundment or immobilization of the  
244 vessel that was operated by or in the actual control of the  
245 defendant or any one vehicle registered in the defendant's name  
246 at the time of impoundment or immobilization, for a period of  
247 10 days or for the unexpired term of any lease or rental  
248 agreement that expires within 10 days. The impoundment or  
249 immobilization must not occur concurrently with the  
250 incarceration of the defendant. The impoundment or  
251 immobilization order may be dismissed in accordance with  
252 paragraph (e) or paragraph (f). ~~The total period of probation~~  
253 ~~and incarceration may not exceed 1 year.~~

254 (c) For the third ~~or subsequent~~ conviction ~~for an offense~~  
255 ~~that occurs within a period of 10 years after the date of a~~  
256 ~~prior conviction for violation of this section~~, the court shall  
257 order imprisonment for not less than 30 days. The court must  
258 also, as a condition of probation, order the impoundment or  
259 immobilization of the vessel that was operated by or in the  
260 actual control of the defendant or any one vehicle registered  
261 in the defendant's name at the time of impoundment or

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262 immobilization~~,~~ for a period of 90 days or for the unexpired  
263 term of any lease or rental agreement that expires within 90  
264 days. The impoundment or immobilization may ~~must~~ not occur  
265 concurrently with the incarceration of the defendant. The  
266 impoundment or immobilization order may be dismissed in  
267 accordance with paragraph (e) or paragraph (f). At least 48  
268 hours of confinement must be consecutive.

269 (j) For the fourth or subsequent conviction under  
270 subparagraph (2)(b)3., the court shall order imprisonment for  
271 not less than 2 years. Another punishment may not be  
272 substituted for this minimum mandatory term of imprisonment  
273 with treatment alternatives. However, the court may, with the  
274 consent of the state, order the defendant to serve a minimum  
275 mandatory sentence of 1 year and 1 day of incarceration  
276 followed by a period of probation during which the defendant  
277 must attend and successfully complete a residential alcohol  
278 treatment program or a residential drug abuse treatment program  
279 or be placed on community control. The court must also, as a  
280 condition of probation, order the impoundment or immobilization  
281 of the vessel that was operated by or in the actual control of  
282 the defendant or any one vehicle registered in the defendant's  
283 name at the time of impoundment or immobilization for a period  
284 of 120 days or for the unexpired term of any lease or rental  
285 agreement that expires within 120 days. The impoundment or  
286 immobilization may not occur concurrently with the  
287 incarceration of the defendant. The impoundment or  
288 immobilization order may be dismissed in accordance with  
289 paragraph (e) or paragraph (f). At least 48 hours of  
290 confinement must be consecutive.

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291 (k) A person who owns but was not operating the vessel  
292 when an offense under this section occurred may request an  
293 evidentiary hearing to determine whether the impoundment or  
294 immobilization should occur. If the court finds that the owner  
295 was unaware of the defendant's prior conviction and sentence  
296 under paragraph (a), paragraph (b), paragraph (c), or paragraph  
297 (j) or if the court finds that there are other mitigating  
298 circumstances that should allow the owner of the vessel to  
299 secure the release of the vessel to the owner's possession, the  
300 court may do so by dismissing the order of impoundment or  
301 immobilization with or without cost to the vessel owner.

302  
303 For the purposes of this section, any conviction for a  
304 violation of s. 316.193, a previous conviction for the  
305 violation of former s. 316.1931, former s. 860.01, or former s.  
306 316.028, or a previous conviction outside this state for  
307 driving under the influence, driving while intoxicated, driving  
308 with an unlawful blood-alcohol level, driving with an unlawful  
309 breath-alcohol level, or any other similar alcohol-related or  
310 drug-related traffic offense, is also considered a previous  
311 conviction for violation of this section.

312 (11) (a) Notwithstanding s. 921.241, every judgment of  
313 guilty with respect to any offense governed by this section  
314 shall comply with this subsection. Each judgment shall be in  
315 writing, signed by the judge, and recorded by the clerk of the  
316 circuit court. The judge shall cause to be affixed to every  
317 such written judgment of guilty, in open court and in the  
318 presence of such judge, the fingerprints of the defendant  
319 against whom such judgment is rendered. Such fingerprints shall

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320 be affixed beneath the judge's signature to any such judgment.  
321 Beneath such fingerprints shall be appended a certificate in  
322 substantially the following form:

323  
324 "I hereby certify that the above and foregoing  
325 fingerprints are of the defendant, (name) , and  
326 that they were placed thereon by said defendant in  
327 my presence, in open court, this the \_\_\_\_\_ day of  
328 (month) \_\_\_\_\_ (year)."

329  
330 Such certificate shall be signed by the judge, whose signature  
331 thereto shall be followed by the word "Judge."

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

337 Section 4. This act shall take effect October 1, 2008.