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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2025	.	
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The Appropriations Committee on Criminal and Civil Justice
(Wright) recommended the following:

Senate Amendment (with title amendment)

Delete lines 56 - 473

and insert:

any substance controlled under chapter 893, or any impairing
substance, when affected to the extent that the person's normal
faculties are impaired;

(b) The person has a blood-alcohol level of 0.08 or more
grams of alcohol per 100 milliliters of blood; or

(c) The person has a breath-alcohol level of 0.08 or more



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grams of alcohol per 210 liters of breath.

(2)(a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of subsection (1) shall be punished:

1. By a fine of:

a. Not less than \$500 or more than \$1,000 for a first conviction.

b. Not less than \$1,000 or more than \$2,000 for a second conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction.

b. Not more than 9 months for a second conviction.

3. For a second conviction, by mandatory placement for a period of at least 1 year, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license.

The portion of a fine imposed in excess of \$500 pursuant to sub-subparagraph 1.a. and the portion of a fine imposed in excess of \$1,000 pursuant to sub-subparagraph 1.b., shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund.

(b)1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in s.



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775.082, s. 775.083, or s. 775.084. In addition, the court shall order the mandatory placement for a period of not less than 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license.

2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than \$2,000 or more than \$5,000 and by imprisonment for not more than 12 months. The portion of a fine imposed in excess of \$2,500 pursuant to this subparagraph shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund. In addition, the court shall order the mandatory placement for a period of at least 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license.

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, the fine imposed for such fourth or subsequent violation may be not less than



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\$2,000. The portion of a fine imposed in excess of \$1,000 pursuant to this subparagraph shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund.

(c) In addition to the penalties in paragraph (a), the court may order placement, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 for at least 6 continuous months upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person if, at the time of the offense, the person had a blood-alcohol level or breath-alcohol level of .08 or higher.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another, as defined in s. 316.1933, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The death of any human being or unborn child commits DUI manslaughter, and commits:

a. A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:



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(I) At the time of the crash, the person knew, or should have known, that the crash occurred; and

(II) The person failed to give information and render aid as required by s. 316.062.

c. A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person has a prior conviction for a violation of this subparagraph or s. 782.071.

For purposes of this subsection, the term "unborn child" has the same meaning as provided in s. 775.021(5). A person who is convicted of DUI manslaughter shall be sentenced to a mandatory minimum term of imprisonment of 4 years.

Section 3. Paragraphs (a) and (c) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, ~~or~~ controlled substances, or impairing substances; implied consent; refusal.-

(1)(a)1.a. A person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who



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has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person must ~~shall~~ be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of his or her ~~the person's~~ privilege to operate a motor vehicle as provided in s. 322.2615(1)(a) for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to a test or tests required under this chapter or chapter 327, and must ~~shall~~ also be told that if he or she refuses to submit to a lawful test of his or her breath ~~and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327,~~ he or she commits a misdemeanor of the second ~~first~~ degree, punishable as provided in s. 775.082 or s. 775.083, or a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this



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section is admissible into evidence in any criminal proceeding.

b. A person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111, or controlled substances, or impairing substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of chemical substances, or controlled substances, or impairing substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances, or controlled substances, or impairing substances.

The urine test must ~~shall~~ be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person must ~~shall~~ be told that his or her failure to submit to any lawful test of his or her urine will result in the suspension of his or her ~~the person's~~ privilege to operate a motor vehicle for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such



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person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to a test or tests required under this chapter or chapter 327, and must ~~shall~~ also be told that if he or she refuses to submit to a lawful test of his or her urine ~~and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327,~~ he or she commits a misdemeanor of the second ~~first~~ degree, punishable as provided in s. 775.082 or s. 775.083, or a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this



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chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program shall:

a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary,



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expedient, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

j. Enforce compliance with this section through civil or administrative proceedings.

k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.

l. Adopt ~~Promulgate~~ rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department



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of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) A person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances, ~~or~~ controlled substances, or impairing substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages, ~~or~~ chemical substances, or controlled substances, or impairing substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A blood test may be administered whether or not the person is told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle upon the public highways of this state and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor. A



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person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been suspended previously or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to a test or tests required under this chapter or chapter 327. The refusal to submit to a blood test upon the request of a law enforcement officer is admissible in evidence in any criminal proceeding.

Section 4. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), paragraph (b) of subsection (3), and subsection (4) of section 316.1933, Florida Statutes, are amended to read:

316.1933 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.—

(1)(a) If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, ~~or~~ any controlled substances, or any impairing substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111, ~~or~~ any substances ~~substance~~ controlled under chapter 893, or any impairing substances. The law enforcement officer may use



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reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

(2)(a) Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances, ~~or~~ controlled substances, or impairing substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood does ~~shall~~ not affect the admissibility of a test of blood withdrawn for medical purposes.

1. Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, if a health care provider, who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of that medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in s. 316.193(1)(b), the health care provider may notify any law enforcement officer or law enforcement agency. Any such notice must be given within a reasonable time after the health care provider receives the test result. Any such notice shall be used only for the purpose of providing the law enforcement officer with reasonable cause to request the withdrawal of a blood



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sample pursuant to this section.

2. The notice shall consist only of the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test, and the date and time of the administration of the test.

3. Nothing contained in s. 395.3025(4), s. 456.057, or any applicable practice act affects the authority to provide notice under this section, and the health care provider is not considered to have breached any duty owed to the person under s. 395.3025(4), s. 456.057, or any applicable practice act by providing notice or failing to provide notice. It is ~~shall~~ not be a breach of any ethical, moral, or legal duty for a health care provider to provide notice or fail to provide notice.

4. A civil, criminal, or administrative action may not be brought against any person or health care provider participating in good faith in the provision of notice or failure to provide notice as provided in this section. Any person or health care provider participating in the provision of notice or failure to provide notice as provided in this section shall be immune from any civil or criminal liability and from any professional disciplinary action with respect to the provision of notice or failure to provide notice under this section. Any such participant has the same immunity with respect to participating in any judicial proceedings resulting from the notice or failure to provide notice.

(3)

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance or impairing substance are ~~shall~~ not be



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admissible as evidence in a criminal prosecution for the possession of a controlled substance or impairing substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or the presence of chemical substances, or ~~or~~ controlled substances, or impairing substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 316.193 upon request for such information.

Section 5. Subsections (1) and (2) of section 316.1934, Florida Statutes, are amended to read:

316.1934 Presumption of impairment; testing methods.—

(1) It is unlawful and punishable as provided in chapter 322 and in s. 316.193 for any person who is under the influence of alcoholic beverages, or ~~or~~ controlled substances, or impairing substances, when affected to the extent that the person's normal faculties are impaired or to the extent that the person is deprived of full possession of normal faculties, to drive or be in actual physical control of any motor vehicle within this state. Such normal faculties include, but are not limited to, the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies, and, in general, normally perform the many mental and physical acts of daily life.

(2) At the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving, or in actual physical control of, a



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vehicle while under the influence of alcoholic beverages, ~~or~~
controlled substances, or impairing substances, when affected to
the extent that the person's normal faculties were impaired or
to the extent that he or she was deprived of full possession of
his or her normal faculties, the results of any test
administered in accordance with s. 316.1932 or s. 316.1933 and
this section are admissible into evidence when otherwise
admissible, and the amount of alcohol in the person's blood or
breath at the time alleged, as shown by chemical analysis of the
person's blood, or by chemical or physical test of the person's
breath, gives rise to the following presumptions:

(a) If there was at that time a blood-alcohol level or
breath-alcohol level of 0.05 or less, it is presumed that the
person was not under the influence of alcoholic beverages to the
extent that his or her normal faculties were impaired.

(b) If there was at that time a blood-alcohol level or
breath-alcohol level in excess of 0.05 but less than 0.08, that
fact does not give rise to any presumption that the person was
or was not under the influence of alcoholic beverages to the
extent that his or her normal faculties were impaired but may be
considered with other competent evidence in determining whether
the person was under the influence of alcoholic beverages to the
extent that his or her normal faculties were impaired.

(c) If there was at that time a blood-alcohol level or
breath-alcohol level of 0.08 or higher, that fact is prima facie
evidence that the person was under the influence of alcoholic
beverages to the extent that his or her normal faculties were
impaired. Moreover, such person who has a blood-alcohol level or
breath-alcohol level of 0.08 or higher is guilty of driving, or



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being in actual physical control of, a motor vehicle, with an unlawful blood-alcohol level or breath-alcohol level.

The presumptions provided in this subsection do not limit the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

Section 6. Section 316.1939, Florida Statutes, is amended to read:

316.1939 Refusal to submit to testing; penalties.—

(1) A person who has refused to submit to a chemical or physical test of his or her breath or urine, as described in s. 316.1932, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law, and such person whose driving privilege was previously suspended or who was previously fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood required under this chapter or chapter 327 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law if all of the following apply, ~~and:~~

(a) ~~Who~~ The arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages, chemical substances, ~~or~~ controlled substances, or impairing substances.

(b) The person ~~who~~ was placed under lawful arrest for a



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violation of s. 316.193, unless such test was requested pursuant to s. 316.1932(1)(c).⁺

(c) The person ~~who~~ was informed that, if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.⁺

(d) The person, after having been informed as required in paragraph (c), still refuses ~~who was informed that a refusal to submit to a lawful test of his or her breath or urine as described in s. 316.1932, if his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law; and~~

~~(e) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer~~

~~commits a misdemeanor of the first degree and is subject to punishment as provided in s. 775.082 or s. 775.083.~~

(2) The disposition of any administrative proceeding that relates to the suspension of a person's driving privilege does not affect a criminal action under this section.

(3) The disposition of a criminal action under this section does not affect any administrative proceeding that relates to the suspension of a person's driving privilege. The department's



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records showing that a person's license has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood are ~~shall be~~ admissible and create ~~shall create~~ a rebuttable presumption of such suspension.

Section 7. Section 316.19395, Florida Statutes, is created to read:

316.19395 Driving under the influence diversion programs.—

(1) Any state attorney may create a driving under the influence diversion program. A state attorney that creates such a diversion program shall publish the terms and conditions of the program on the website of the office of the state attorney.

(2) Each state attorney that offers a diversion program under this section shall notify the department of each person who successfully completes the program. The department shall notate the successful completion of the diversion program on the driving record of each such person.

(3) A person who successfully completes a diversion program offered under this section is ineligible for future participation in such a program.

Section 8. Subsection (1) of section 316.656, Florida Statutes, is amended to read:

316.656 Mandatory adjudication; prohibition against accepting plea to lesser included offense.—

(1) Notwithstanding ~~the provisions of~~ s. 948.01, a court may not ~~no court may~~ suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of s. 316.193 or s. 316.1939, for manslaughter resulting from the operation of a motor vehicle, or for vehicular homicide.

Section 9. Subsection (2) of section 322.34, Florida



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Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(2) Any person whose driver license or driving privilege has been canceled, suspended, or revoked as provided by law, or who does not have a driver license or driving privilege but is under suspension or revocation equivalent status as defined in s. 322.01(43), except persons defined in s. 322.264, who, knowing of such cancellation, suspension, revocation, or suspension or revocation equivalent status, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, or while under suspension or revocation equivalent status, commits:

(a) A misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b)~~1~~. A misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, upon a second or subsequent conviction, except as provided in paragraph (c).

~~2~~. A person convicted of a third or subsequent conviction, except as provided in paragraph (c), must serve a minimum of 10 days in jail.

(c) A felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, upon a third or subsequent conviction if the current violation of this section or the most recent prior violation of the section is related to driving while license canceled, suspended, revoked, or suspension or revocation equivalent status resulting from a violation of:

1. Driving under the influence. A person to whom this



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subparagraph applies must serve a minimum of 30 days in jail upon a first conviction, a minimum of 60 days in jail upon a second conviction, and a minimum of 90 days in jail upon a third or subsequent conviction;

2. Refusal to submit to a urine, breath-alcohol, or blood alcohol test. A person to whom this subparagraph applies must serve a minimum of 30 days in jail upon a first conviction, a minimum of 60 days in jail upon a second conviction, and a minimum of 90 days in jail upon a third or subsequent conviction;

3. A traffic offense causing death or serious bodily injury; or

4. Fleeing or eluding.

The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation, or suspension or revocation equivalent status; or the person received notice as provided in subsection (4). There ~~is shall be~~ a rebuttable presumption that the knowledge requirement is satisfied if a judgment or an order as provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

Section 10. Subsections (1) and (8) of section 327.35, Florida Statutes, are amended to read:

327.35 Boating under the influence; penalties; "designated drivers."—



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(1) A person commits ~~is guilty of~~ the offense of boating under the influence and is subject to punishment as provided in subsection (2) if the person is operating a vessel within this state and:

(a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, ~~or~~ any substance controlled under chapter 893, or any impairing substance, when affected to the extent that the person's normal faculties are impaired;

(b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or

(c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

(8) A person who is arrested for a violation of this section may not be released from custody:

(a) Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, ~~or~~ any substance controlled under chapter 893, or any impairing substance and affected to the extent that his or her normal faculties are impaired;

(b) Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; or

(c) Until 8 hours have elapsed from the time the person was arrested.

Section 11. Paragraphs (a), (c), (d), and (e) of subsection (1) and subsection (3) of section 327.352, Florida Statutes, are amended to read:

327.352 Tests for alcohol and other, ~~chemical substances~~, ~~or controlled~~ substances; implied consent; refusal.-



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(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, a person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath under this chapter will result in a civil penalty of \$500, and that if he or she refuses to submit to a lawful test of his or her breath and he or she has been previously fined under s. 327.35215 or his or her driving privilege has been previously suspended for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in



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addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. A person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111, ~~or~~ controlled substances, or impairing substances if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances, ~~or~~ controlled substances, or impairing substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was operating a vessel within this state while under the influence of chemical substances, ~~or~~ controlled substances, or impairing substances. The urine test must be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine under this chapter will result in a civil penalty of \$500, and that if he or she refuses to submit to a lawful



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test of his or her urine and he or she has been previously fined under s. 327.35215 or his or her driving privilege has been previously suspended for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(c) A person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances, ~~or~~ controlled substances, or impairing substances as provided in this section if there is reasonable cause to believe the person was operating a vessel while under the influence of alcoholic beverages or chemical, ~~or~~ controlled, or impairing substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test must be performed in a reasonable manner. A person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A person who is capable of refusal shall be told that his or her failure to submit to such a blood



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test will result in a civil penalty of \$500. The refusal to submit to a blood test upon the request of a law enforcement officer is admissible in evidence in any criminal proceeding.

(d) If the arresting officer does not request a chemical or physical breath test of the person arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages, ~~or~~ controlled substances, or impairing substances, the person may request the arresting officer to have a chemical or physical test made of the arrested person's breath or a test of the urine or blood for the purpose of determining the alcoholic content of the person's blood or breath or the presence of chemical substances, ~~or~~ controlled substances, or impairing substances; and, if so requested, the arresting officer shall have the test performed.

(e)1. The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules of the Department of Law Enforcement. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

2. Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining its alcoholic content or the presence of chemical substances, ~~or~~ controlled substances, or impairing substances therein. However, the failure of a law enforcement



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officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

3. The person tested may, at his or her own expense, have a physician, registered nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer for the purpose of determining the amount of alcohol in the person's blood or breath or the presence of chemical substances, ~~or~~ controlled substances, or impairing substances at the time alleged, as shown by chemical analysis of his or her blood or urine, or by chemical or physical test of his or her breath. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. The law enforcement officer may ~~shall~~ not interfere with the person's opportunity to obtain the independent test and shall provide the person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.

4. Upon the request of the person tested, full information concerning the results of the test taken at the direction of the law enforcement officer shall be made available to the person or his or her attorney. Full information is limited to the following:

a. The type of test administered and the procedures followed.



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b. The time of the collection of the blood or breath sample analyzed.

c. The numerical results of the test indicating the alcohol content of the blood and breath.

d. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test.

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required inspection of such instrument.

Full information does not include manuals, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

(3) Notwithstanding any provision of law pertaining to the



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confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or breath or the presence of chemical substances, ~~or~~ controlled substances, or impairing substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 upon request for such information.

Section 12. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), paragraph (b) of subsection (3), and subsection (4) of section 327.353, Florida Statutes, are amended to read:

327.353 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.—

(1)(a) If a law enforcement officer has probable cause to believe that a vessel operated by a person under the influence of alcoholic beverages, any chemical substances, ~~or~~ any controlled substances, or any impairing substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person operating or in actual physical control of the vessel to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111, ~~or~~ any substance controlled under chapter 893, or any impairing substance. The law enforcement officer may use reasonable force if necessary to require the person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s.



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327.352, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

(2)(a) Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances, or controlled substances, or impairing substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood does ~~shall~~ not affect the admissibility of a test of blood withdrawn for medical purposes.

(3)

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance or impairing substance are not admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or the presence of chemical substances, or controlled substances, or impairing substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 upon request for such information.

Section 13. Subsections (1) and (2) of section 327.354,



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Florida Statutes, are amended to read:

327.354 Presumption of impairment; testing methods.—

(1) It is unlawful and punishable as provided in s. 327.35 for any person who is under the influence of alcoholic beverages, ~~or~~ controlled substances, or impairing substances, when affected to the extent that the person's normal faculties are impaired or to the extent that the person is deprived of full possession of normal faculties, to operate any vessel within this state. Such normal faculties include, but are not limited to, the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies, and, in general, normally perform the many mental and physical acts of daily life.

(2) At the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating a vessel while under the influence of alcoholic beverages, ~~or~~ controlled substances, or impairing substances, when affected to the extent that the person's normal faculties were impaired or to the extent that he or she was deprived of full possession of his or her normal faculties, the results of any test administered in accordance with s. 327.352 or s. 327.353 and this section are admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood or breath at the time alleged, as shown by chemical analysis of the person's blood, or by chemical or physical test of the person's breath, gives rise to the following presumptions:

(a) If there was at that time a blood-alcohol level or breath-alcohol level of 0.05 or less, it is presumed that the



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person was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(b) If there was at that time a blood-alcohol level or breath-alcohol level in excess of 0.05 but less than 0.08, that fact does not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired but may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(c) If there was at that time a blood-alcohol level or breath-alcohol level of 0.08 or higher, that fact is prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired. Any person who operates a vessel and who has a blood-alcohol level or breath-alcohol level of 0.08 or higher is guilty of operating a vessel with an unlawful blood-alcohol level or breath-alcohol level.

The presumptions provided in this subsection do not limit the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

Section 14. Section 327.359, Florida Statutes, is amended to read:

327.359 Refusal to submit to testing; penalties.—A person who has refused to submit to a chemical or physical test of his or her breath or urine, as described in s. 327.352, and who has



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been previously fined under s. 327.35215 or has previously had his or her driver license suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, and:

(1) Who the arresting law enforcement officer had probable cause to believe was operating or in actual physical control of a vessel in this state while under the influence of alcoholic beverages, chemical substances, ~~or~~ controlled substances, or impairing substances;

(2) Who was placed under lawful arrest for a violation of s. 327.35 unless such test was requested pursuant to s. 327.352(1)(c);

(3) Who was informed that if he or she refused to submit to such test, he or she is subject to a fine of \$500;

(4) Who was informed that a refusal to submit to a lawful test of his or her breath or urine, if he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and

(5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:



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939 Delete lines 6 - 34
940 and insert:
941 influence of any impairing substance; providing
942 enhanced criminal penalties for violation of driving
943 under the influence if the person has a prior
944 conviction for a violation of specified provisions;
945 amending s. 316.1932, F.S.; requiring that a person be
946 told that his or her failure to submit to a lawful
947 test of breath or urine is a second degree misdemeanor
948 or a first degree misdemeanor under certain
949 circumstances; conforming provisions to changes made
950 by the act; amending ss. 316.1933 and 316.1934, F.S.;
951 conforming provisions to changes made by the act;
952 amending s. 316.1939, F.S.; classifying a person's
953 refusal to submit to a chemical or physical test of
954 breath or urine as a second degree misdemeanor or a
955 first degree misdemeanor under certain circumstances;
956 conforming a provision to changes made by the act;
957 creating s. 316.19395, F.S.; authorizing state
958 attorneys to create driving under the influence
959 diversion programs; providing requirements for such
960 diversion programs; providing that a person who
961 successfully completes a diversion program is
962 ineligible for participation in such a program in the
963 future; amending s. 316.656, F.S.; prohibiting a court
964 from suspending, deferring, or withholding
965 adjudication of guilt or imposition of sentence for a
966 specified violation; amending s. 322.34, F.S.;
967 providing penalties for specified violations of



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968 driving while a license or driving privilege is
969 canceled, suspended, or revoked or under suspension or
970 revocation equivalent status; amending s. 327.35,
971 F.S.; prohibiting a person from operating a vessel
972 while under the influence of any impairing substance;
973 conforming a provision to changes made by the act;
974 amending ss. 327.352, 327.353, 327.354, and 327.359,
975 F.S.; conforming provisions to changes made by the
976 act; amending s. 933.02, F.S.; permitting the