

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 22, 1998 Revised: \_\_\_\_\_

Subject: DUI Impoundment/Vehicles or Vessels

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Dugger	Miller	CJ	Favorable/CS
2.	_____	_____	TR	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The CS/SB 1382 makes identical amendments to the DUI (driving under the influence) and BUI (boating under the influence) provisions requiring impoundment or immobilization of a vehicle or vessel when the operator of the vehicle or vessel is under the influence of alcohol or drugs (ss. 316.193 and 327.35, F.S.). The CS requires the court to order impoundment or immobilization of the vehicle or vessel as a condition of probation, rather than expressly providing that impoundment or immobilization cannot be concurrent with probation.

The CS allows the court at sentencing, to order the impoundment or immobilization of the vehicle or vessel involved in the DUI or BUI, or one vehicle or vessel registered in the defendant’s name at the time of the impoundment or immobilization.

The CS does not change the currently prescribed time periods for impoundment or immobilization (10, 30, or 90 days, depending on the number of DUI or BUI convictions and the length of time between the convictions), nor does it change the fact that impoundment or immobilization is currently mandatory.

The CS allows the court to dismiss the impoundment or immobilization order, without assessing any costs to an owner who was not operating the vehicle or vessel when the DUI or BUI occurred, if such owner shows documentation to the court that (1) the vehicle or vessel was stolen at the time of the offense or (2) that such owner bought the vehicle or vessel after the offense was committed from someone other than the defendant or the defendant’s agent. If the court denies the request to dismiss the order, the CS allows the owner to request an evidentiary hearing to determine whether impoundment or immobilization should occur.

This CS substantially amends the following sections of the Florida Statutes: 316.193 and 327.35.

## II. Present Situation:

Section 316.193(6)(d), F.S., provides that in addition to any other penalty imposed by this section, the court must order the impoundment or immobilization of a vehicle that was driven by, or in the actual physical control of, a person who is convicted of driving under the influence of alcohol or drugs to the extent that normal faculties are impaired (DUI), unless the court finds that the family of the owner has no other public or private means of transportation. The impoundment statute has been upheld against a vagueness challenge by the Florida Supreme Court in *Muller v. State*, 693 So.2d 976 (Fla. 1997).

The period of impoundment or immobilization under the statute is 10 days for a first conviction, 30 days for a second conviction within 3 years of a prior conviction, and 90 days for a third conviction within 5 years of a prior conviction. *The period of impoundment or immobilization may not be concurrent with probation or imprisonment.* (Probation for first-time offenders is required under the statute and cannot exceed one year.) If the vehicle is leased, the period of impoundment or immobilization may not extend beyond the expiration of the lease agreement.

Within 7 business days after the date the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the vehicle, if the registered owner is a person other than the person convicted of DUI, and to each person of record claiming a lien against the vehicle. All costs and fees must be paid by the owner of the vehicle or by the person leasing the vehicle if the vehicle is leased.

A person who owns an impounded or immobilized vehicle or a person having a lien of record against such vehicle may file a complaint in the county where the owner resides to determine whether the vehicle was wrongly taken or withheld from the owner or lienholder within 10 days after the date that person learns the location of the vehicle. Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting a bond or other adequate security that covers the amount of the costs and fees for impoundment or immobilization. When the bond is posted and a court fee is paid, the clerk of the court is required to issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or its contents.

Section 327.35, F.S., sets forth comparable provisions regarding impoundment or immobilization of vessels operated by a person who is “boating under the influence of alcohol or drugs (BUI).”

The CS allows the court at sentencing, to order the impoundment or immobilization of the vehicle or vessel involved in the DUI or BUI, or one vehicle or vessel registered in the defendant’s name at the time of the impoundment or immobilization.

### III. Effect of Proposed Changes:

The CS/SB 1382 makes identical amendments to the DUI and BUI provisions requiring impoundment or immobilization of a vehicle or vessel when the operator of the vehicle or vessel is under the influence of alcohol or drugs (ss. 316.193 and 327.35, F.S.). The CS requires the court to order impoundment or immobilization of the vehicle or vessel as a condition of probation, rather than expressly providing that impoundment or immobilization cannot be concurrent with probation. Under the CS, impoundment or immobilization cannot be concurrent with incarceration, which is current law. The CS does not change the currently prescribed time periods for impoundment or immobilization (10, 30, or 90 days, depending on the number of DUI or BUI convictions and the length of time between the convictions), nor does it change the fact that impoundment or immobilization is currently mandatory.

The CS allows the court at sentencing, to order the impoundment or immobilization of the vehicle or vessel involved in the DUI or BUI, or one vehicle or vessel registered in the defendant's name at the time of the impoundment or immobilization. The CS also stipulates that s. 718.78, F.S., relating to liens for recovering, towing, or storing vehicles applies to impoundment or immobilization under s. 316.193, F.S.

Under the CS, the clerk of the court must send notice by certified mail, return receipt requested, to lienholders and the registered owner of a vehicle or vessel, if the owner is not the defendant, within 7 business days after the court order for impoundment or immobilization is issued and again 30 business days before the actual impoundment or immobilization. The CS allows the court to dismiss the order for vehicle impoundment or immobilization if the family has no other private means of transportation.

The CS also allows the court to dismiss the impoundment or immobilization order, without assessing any costs to an owner who was not operating the vehicle or vessel when the DUI or BUI occurred, if such owner shows documentation to the court that (1) the vehicle or vessel was stolen at the time of the offense or (2) that such owner bought the vehicle or vessel after the offense was committed from someone other than the defendant or the defendant's agent.

If the court denies the request to dismiss the order, the CS allows the owner to request an evidentiary hearing to determine whether impoundment or immobilization should occur. At the evidentiary hearing, if the court determines that the vehicle or vessel was stolen or the purchase was made without knowledge of the offense and there was no intent on the part of the buyer to circumvent the impoundment or immobilization order, the court must dismiss the order, without assessing any costs against the owner.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Vessel or vehicle owners who were not operating the vessel or vehicle at the time of the DUI or BUI and who have their impoundment or immobilization orders dismissed under the CS will not be required to pay any fees associated with the impoundment process.

C. Government Sector Impact:

No known fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.