

By Senator Rossin

35-80-99

1                                   A bill to be entitled  
2           An act relating to driving under the influence;  
3           amending s. 316.193, F.S.; increasing the  
4           penalty imposed for a fourth or subsequent  
5           conviction of driving under the influence;  
6           increasing the penalties imposed for causing  
7           damage to property or serious bodily injury  
8           while driving under the influence; providing  
9           that it is a first-degree felony to cause the  
10          death of another while driving under the  
11          influence; deleting provisions that impose an  
12          enhanced penalty if a person causes the death  
13          of another while driving under the influence,  
14          knew or should have known that the accident  
15          occurred, and failed to give information and  
16          render aid; providing an effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20           Section 1. Section 316.193, Florida Statutes, is  
21 amended to read:

22           316.193 Driving under the influence; penalties.--

23           (1) A person commits ~~is guilty of~~ the offense of  
24 driving under the influence and is subject to punishment as  
25 provided in subsection (2) if the person is driving or in  
26 actual physical control of a vehicle within this state and:

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

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1           (b) The person has a blood-alcohol level of 0.08 or  
2 more grams of alcohol per 100 milliliters of blood; or  
3           (c) The person has a breath-alcohol level of 0.08 or  
4 more grams of alcohol per 210 liters of breath.  
5           (2)(a) Except as provided in paragraph (b), subsection  
6 (3), or subsection (4), any person who is convicted of a  
7 violation of subsection (1) shall be punished:  
8           1. By a fine of:  
9           a. Not less than \$250 or more than \$500 for a first  
10 conviction.  
11           b. Not less than \$500 or more than \$1,000 for a second  
12 conviction.  
13           c. Not less than \$1,000 or more than \$2,500 for a  
14 third conviction; and  
15           2. By imprisonment for:  
16           a. Not more than 6 months for a first conviction.  
17           b. Not more than 9 months for a second conviction.  
18           c. Not more than 12 months for a third conviction.  
19           (b) Any person who is convicted of a fourth or  
20 subsequent violation of this section commits ~~is guilty of~~ a  
21 felony of the second ~~third~~ degree, punishable as provided in  
22 s. 775.082, s. 775.083, or s. 775.084; however, the fine  
23 imposed for such fourth or subsequent violation may be not  
24 less than \$1,000.  
25           (3) Any person:  
26           (a) Who is in violation of subsection (1);  
27           (b) Who operates a vehicle; and  
28           (c) Who, by reason of such operation, causes:  
29           1. Damage to the property or person of another commits  
30 a felony ~~misdemeanor~~ of the third ~~first~~ degree, punishable as  
31 provided in s. 775.082, ~~or~~ s. 775.083, ~~or~~ s. 775.084.

1           2. Serious bodily injury to another, as defined in s.  
2 316.1933, commits a felony of the second ~~third~~ degree,  
3 punishable as provided in s. 775.082, s. 775.083, or s.  
4 775.084.

5           3. The death of any human being commits DUI  
6 manslaughter, ~~and commits:~~

7           ~~a.~~ a felony of the first ~~second~~ degree, punishable as  
8 provided in s. 775.082, s. 775.083, or s. 775.084.

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

11           ~~(I) At the time of the accident, the person knew, or~~  
12 ~~should have known, that the accident occurred; and~~

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

15           (4) Any person who is convicted of a violation of  
16 subsection (1) and who has a blood-alcohol level or  
17 breath-alcohol level of 0.20 or higher, or any person who is  
18 convicted of a violation of subsection (1) and who at the time  
19 of the offense was accompanied in the vehicle by a person  
20 under the age of 18 years, shall be punished:

21           (a) By a fine of:

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

24           2. Not less than \$1,000 or more than \$2,000 for a  
25 second conviction.

26           3. Not less than \$2,000 or more than \$5,000 for a  
27 third conviction.

28           (b) By imprisonment for:

29           1. Not more than 9 months for a first conviction.

30           2. Not more than 12 months for a second conviction.

31           3. Not more than 12 months for a third conviction.

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2 For the purposes of this subsection, any conviction for a  
3 violation of s. 327.35, only the instant offense is required  
4 to be a violation of subsection (1) by a person who has a  
5 blood-alcohol level or breath-alcohol level of 0.20 or higher.  
6 (5) The court shall place any offender convicted of  
7 violating this section on monthly reporting probation and  
8 shall require attendance at a substance abuse course licensed  
9 by the department; and the agency conducting the course may  
10 refer the offender to an authorized service provider for  
11 substance abuse evaluation and treatment, in addition to any  
12 sentence or fine imposed under this section. The offender  
13 shall assume reasonable costs for such education, evaluation,  
14 and treatment, with completion of all such education,  
15 evaluation, and treatment being a condition of reporting  
16 probation. Treatment resulting from a psychosocial evaluation  
17 may not be waived without a supporting psychosocial evaluation  
18 conducted by an agency appointed by the court and with access  
19 to the original evaluation. The offender shall bear the cost  
20 of this procedure. The term "substance abuse" means the abuse  
21 of alcohol or any substance named or described in Schedules I  
22 through V of s. 893.03. If an offender referred to treatment  
23 under this subsection fails to report for or complete such  
24 treatment or fails to complete the substance abuse education  
25 course, the DUI program shall notify the court and the  
26 department of the failure. Upon receipt of the notice, the  
27 department shall cancel the offender's driving privilege. The  
28 department shall reinstate the driving privilege when the  
29 offender completes the substance abuse education course or  
30 enters treatment required under this subsection. The  
31 organization that conducts the substance abuse education and

1 evaluation may not provide required substance abuse treatment  
2 unless a waiver has been granted to that organization by the  
3 department. A waiver may be granted only if the department  
4 determines, in accordance with its rules, that the service  
5 provider that conducts the substance abuse education and  
6 evaluation is the most appropriate service provider and is  
7 licensed under chapter 397 or is exempt from such licensure.  
8 All DUI treatment programs providing treatment services on  
9 January 1, 1994, shall be allowed to continue to provide such  
10 services until the department determines whether a waiver  
11 should be granted. A statistical referral report shall be  
12 submitted quarterly to the department by each organization  
13 authorized to provide services under this section.

14 (6) With respect to any person convicted of a  
15 violation of subsection (1), regardless of any penalty imposed  
16 pursuant to subsection (2), subsection (3), or 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), or paragraph  
8 (g).

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 the vehicle that was operated by or in the  
15 actual control of the defendant or any one vehicle registered  
16 in the defendant's name at the time of impoundment or  
17 immobilization, for a period of 30 days or for the unexpired  
18 term of any lease or rental agreement that expires within 30  
19 days. The impoundment or immobilization must not occur  
20 concurrently with the incarceration of the defendant. The  
21 impoundment or immobilization order may be dismissed in  
22 accordance with paragraph (e), paragraph (f), or paragraph  
23 (g). At least 48 hours of confinement must be consecutive.

24 (c) For the third or subsequent conviction for an  
25 offense that occurs within a period of 10 years after the date  
26 of a prior conviction for violation of this section, the court  
27 shall order imprisonment for not less than 30 days. The court  
28 must also, as a condition of probation, order the impoundment  
29 or immobilization of the vehicle that was operated by or in  
30 the actual control of the defendant or any one vehicle  
31 registered in the defendant's name at the time of impoundment

1 or immobilization, for a period of 90 days or for the  
2 unexpired term of any lease or rental agreement that expires  
3 within 90 days. The impoundment or immobilization must not  
4 occur concurrently with the incarceration of the defendant.  
5 The impoundment or immobilization order may be dismissed in  
6 accordance with paragraph (e), paragraph (f), or paragraph  
7 (g). At least 48 hours of confinement must be consecutive.

8 (d) The court must at the time of sentencing the  
9 defendant issue an order for the impoundment or immobilization  
10 of a vehicle. Within 7 business days after the date that the  
11 court issues the order of impoundment or immobilization, and  
12 once again 30 business days before the actual impoundment or  
13 immobilization of the vehicle, the clerk of the court must  
14 send notice by certified mail, return receipt requested, to  
15 the registered owner of each vehicle, if the registered owner  
16 is a person other than the defendant, and to each person of  
17 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.

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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 means of transportation.

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

24           (i) The person who owns a vehicle that is impounded or  
25 immobilized under this paragraph, or a person who has a lien  
26 of record against such a vehicle and who has not requested a  
27 review of the impoundment pursuant to paragraph (e), paragraph  
28 (f), or paragraph (g), may, within 10 days after the date that  
29 person has knowledge of the location of the vehicle, file a  
30 complaint in the county in which the owner resides to  
31 determine whether the vehicle was wrongfully taken or withheld



1 from the owner or lienholder. Upon the filing of a complaint,  
2 the owner or lienholder may have the vehicle released by  
3 posting with the court a bond or other adequate security equal  
4 to the amount of the costs and fees for impoundment or  
5 immobilization, including towing or storage, to ensure the  
6 payment of such costs and fees if the owner or lienholder does  
7 not prevail. When the bond is posted and the fee is paid as  
8 set forth in s. 28.24, the clerk of the court shall issue a  
9 certificate releasing the vehicle. At the time of release,  
10 after reasonable inspection, the owner or lienholder must give  
11 a receipt to the towing or storage company indicating any loss  
12 or damage to the vehicle or to the contents of the vehicle.

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

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21 For the purposes of this section, any conviction for a  
22 violation of s. 327.35; a previous conviction for the  
23 violation of former s. 316.1931, former s. 860.01, or former  
24 s. 316.028; or a previous conviction outside this state for  
25 driving under the influence, driving while intoxicated,  
26 driving with an unlawful blood-alcohol level, driving with an  
27 unlawful breath-alcohol level, or any other similar  
28 alcohol-related or drug-related traffic offense, is also  
29 considered a previous conviction for violation of this  
30 section. However, in satisfaction of the fine imposed pursuant  
31 to this section, the court may, upon a finding that the

1 defendant is financially unable to pay either all or part of  
2 the fine, order that the defendant participate for a specified  
3 additional period of time in public service or a community  
4 work project in lieu of payment of that portion of the fine  
5 which the court determines the defendant is unable to pay. In  
6 determining such additional sentence, the court shall consider  
7 the amount of the unpaid portion of the fine and the  
8 reasonable value of the services to be ordered; however, the  
9 court may not compute the reasonable value of services at a  
10 rate less than the federal minimum wage at the time of  
11 sentencing.

12 (7) A conviction under this section does not bar any  
13 civil suit for damages against the person so convicted.

14 (8) At the arraignment, or in conjunction with any  
15 notice of arraignment provided by the clerk of the court, the  
16 clerk shall provide any person charged with a violation of  
17 this section with notice that upon conviction the court shall  
18 suspend or revoke the offender's driver's license and that the  
19 offender should make arrangements for transportation at any  
20 proceeding in which the court may take such action. Failure  
21 to provide such notice does not affect the court's suspension  
22 or revocation of the offender's driver's license.

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

25 (a) Until the person is no longer under the influence  
26 of alcoholic beverages, any chemical substance set forth in s.  
27 877.111, or any substance controlled under chapter 893 and  
28 affected to the extent that his or her normal faculties are  
29 impaired;

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

1 (c) Until 8 hours have elapsed from the time the  
2 person was arrested.  
3 (10) The rulings of the Department of Highway Safety  
4 and Motor Vehicles under s. 322.2615 shall not be considered  
5 in any trial for a violation of this section. Testimony or  
6 evidence from the administrative proceedings or any written  
7 statement submitted by a person in his or her request for  
8 administrative review is inadmissible into evidence or for any  
9 other purpose in any criminal proceeding, unless timely  
10 disclosed in criminal discovery pursuant to Rule 3.220,  
11 Florida Rules of Criminal Procedure.

12 Section 2. This act shall take effect October 1, 1999.

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SENATE SUMMARY

Increases various penalties imposed for the offense of driving under the influence. Provides that a fourth or subsequent conviction for driving under the influence is a second-degree felony rather than a third-degree felony. Provides that damaging the property or person of another while driving under the influence is a third-degree felony rather than a first-degree misdemeanor. Provides that causing serious bodily injury while driving under the influence is a second-degree felony rather than a third-degree felony. Provides that causing the death of another while driving under the influence is a first-degree felony regardless of whether the person knew or should have known that the accident occurred and failed to give information and render aid.