



---

# **CRIMINAL JUSTICE COMMITTEE MEETING**

**Wednesday, December 7, 2005  
9:15 a.m. - 11:00 a.m.  
404 House Office Building**

**ACTION PACKET**

Allan G. Bense  
Speaker

Dick Kravitz  
Chair

# COMMITTEE MEETING REPORT

## Criminal Justice Committee

12/7/2005 9:15:00AM

Location: 404 HOB

### Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Dick Kravitz (Chair)			X
Sandra Adams	X		
Bruce Antone	X		
Adam Hasner			X
Wilbert Holloway	X		
Marcelo Llorente	X		
Ari Porth	X		
Everett Rice	X		
<b>Totals:</b>	<b>6</b>	<b>0</b>	<b>2</b>

Committee meeting was reported out: Wednesday, December 07, 2005 11:14:51AM

# COMMITTEE MEETING REPORT

## Criminal Justice Committee

12/7/2005 9:15:00AM

Location: 404 HOB

### HB 91 : Residence of Sexual Offenders and Predators

Favorable With Committee Substitute -

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Sandra Adams	X				
Bruce Antone	X				
Adam Hasner			X		
Wilbert Holloway	X				
Marcelo Llorente	X				
Ari Porth	X				
Everett Rice	X				
Dick Kravitz (Chair)			X		
<b>Total Yeas: 6</b>		<b>Total Nays: 0</b>			

### Appearances:

HB 91--Residence of Sexual Offenders and Predators

Ron Book (Lobbyist) - Proponent

204 E. College

Tallahassee Florida 32301

HB 91--Residence of Sexual Offenders and Predators

Robert Marks - Proponent

City of Parkland

7121 E. CypressHead Drive

Parkland Florida 33067

Phone: 954-755-7464

HB 91--Residence of Sexual Offenders and Predators

Bob Dillinger (State Employee) - Opponent

Public Defender's Association

CJC

Clearwater Florida 33762

Phone: 727-464-6865

Committee meeting was reported out: Wednesday, December 07, 2005 11:14:51AM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 91

COUNCIL/COMMITTEE ACTION

ADOPTED  (Y/N)  
 ADOPTED AS AMENDED  (Y/N)  
 ADOPTED W/O OBJECTION  (Y/N)  
 FAILED TO ADOPT  (Y/N)  
 WITHDRAWN  (Y/N)  
 OTHER

**ADOPTED**

1 Council/Committee hearing bill: Criminal Justice  
 2 Representative Goldstein offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 794.065, Florida Statutes, is amended to read:

794.065 Unlawful place of residence for restricted sex offenders; certain leases prohibited persons convicted of certain sex offenses.--

(1) As used in this section, the term:

(a) "Convicted" shall have the same meaning as provided in s. 943.0435.

(b) "Restricted sex offender" means a person convicted of:

1. A felony violation of any statute listed in s. 943.0435(1)(a)1.;

2. Any similar offense committed in this state that has been redesignated from a former statute number to one of those listed in s. 943.0435(1)(a)1.; or

3. Any similar offense in another jurisdiction that would be a felony if committed in this state,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

23 where the victim of the offense was under the age of 18 at the  
24 time of the offense and the offender was 18 years of age or  
25 older at the time of the offense, or the offender was under the  
26 age of 18 at the time of the offense and was prosecuted as an  
27 adult.

28 (c) "Within 2,500 feet" means a distance that shall be  
29 measured in a straight line from the outer boundary of the real  
30 property upon which the residential dwelling unit of the  
31 restricted sex offender is located. The distance may not be  
32 measured by a pedestrian route or automobile route, but instead  
33 shall be measured as the shortest straight line between the two  
34 points without regard to any intervening structures or objects.  
35 Without otherwise limiting the foregoing measurement  
36 instructions, under those circumstances in which the residential  
37 dwelling unit of the restricted sex offender is within a  
38 cooperative, condominium, or apartment building, the parcel of  
39 real property described in this paragraph shall consist of the  
40 parcel or parcels of real property upon which the cooperative,  
41 condominium, or apartment building that contains the residential  
42 dwelling unit of the restricted sex offender is located.

43 (2)(a) It is unlawful for any person who is a restricted  
44 sex offender to reside within 2,500 feet of any school, public  
45 school bus stop located as provided in s. 947.1405(7)(a), day  
46 care center, park, playground, or other place where children  
47 regularly congregate. A restricted sex offender who violates  
48 this section and whose conviction of an offense described in  
49 paragraph (1)(b) was classified as a felony of the first degree  
50 or higher commits a felony of the third degree, punishable as  
51 provided in s. 775.082 or s. 775.083. A restricted sex offender  
52 who violates this section and whose conviction of an offense  
53 described in paragraph (1)(b) was classified as a felony of the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

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

56 (b) The provisions of this subsection shall not prohibit a  
57 restricted sex offender from continuing to reside at his or her  
58 residence solely because a school, public school bus stop  
59 located as provided in s. 947.1405(7)(a), day care center, park,  
60 playground, or other place where children regularly congregate  
61 is built or established within 2,500 feet of that residence  
62 after the offender has established residence.

63 (c) This subsection applies to any person convicted of an  
64 offense described in paragraph (1)(b) that occurs on or after  
65 October 1, 2006.

66 (3)(a)(1) It is unlawful for any person who has been  
67 convicted of a violation of s. 794.011, s. 800.04, s. 827.071,  
68 or s. 847.0145, regardless of whether adjudication has been  
69 withheld, in which the victim of the offense was less than 16  
70 years of age, to reside within 1,000 feet of any school, day  
71 care center, park, or playground. A person who violates this  
72 section and whose conviction under s. 794.011, s. 800.04, s.  
73 827.071, or s. 847.0145 was classified as a felony of the first  
74 degree or higher commits a felony of the third degree,  
75 punishable as provided in s. 775.082 or s. 775.083. A person who  
76 violates this section and whose conviction under s. 794.011, s.  
77 800.04, s. 827.071, or s. 847.0145 was classified as a felony of  
78 the second or third degree commits a misdemeanor of the first  
79 degree, punishable as provided in s. 775.082 or s. 775.083.

80 (b)(2) This subsection ~~section~~ applies to any person  
81 convicted of a violation of s. 794.011, s. 800.04, s. 827.071,  
82 or s. 847.0145 for offenses that occur on or after October 1,  
83 2004.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

84       (4) A landlord or owner of a residential dwelling unit  
85 shall not knowingly rent or lease a residential dwelling unit  
86 located within 2,500 feet of a school, public school bus stop  
87 located as provided in s. 947.1405(7)(a), day care center, park,  
88 playground, or other place where children regularly congregate  
89 if a prospective tenant, as defined in s. 83.43, is a restricted  
90 sex offender who intends to occupy the unit. A person who  
91 violates this subsection commits a misdemeanor of the second  
92 degree, punishable as provided in s. 775.082 or s. 775.083.  
93 It shall be an affirmative defense to this offense that prior to  
94 rental or lease, the landlord or owner used due diligence and  
95 was unable to determine that a prospective tenant of the unit  
96 was a restricted sex offender intending to occupy the unit.

97       (5) Nothing contained in this section shall prevent any  
98 county or municipality from enacting an ordinance relating to  
99 restrictions on the location of the residence of restricted sex  
100 offenders provided that such restrictions are identical to the  
101 provisions of this section. Such an ordinance may differ as to  
102 the offenses that might subject an offender to residence  
103 restrictions.

104       Section 2. Paragraph (a) of subsection (7) of section  
105 947.1405, Florida Statutes, is amended to read:

106       947.1405 Conditional release program.--

107       (7)(a) Any inmate who is convicted of a crime committed on  
108 or after October 1, 1995, or who has been previously convicted  
109 of a crime committed on or after October 1, 1995, in violation  
110 of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, and is  
111 subject to conditional release supervision, shall have, in  
112 addition to any other conditions imposed, the following special  
113 conditions imposed by the commission:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

114 1. A mandatory curfew from 10 p.m. to 6 a.m. The  
115 commission may designate another 8-hour period if the offender's  
116 employment precludes the above specified time, and such  
117 alternative is recommended by the Department of Corrections. If  
118 the commission determines that imposing a curfew would endanger  
119 the victim, the commission may consider alternative sanctions.

120 2. If the victim was under the age of 18, a prohibition on  
121 living within 2,500 ~~1,000~~ feet of a school, day care center,  
122 park, playground, designated public school bus stop, or other  
123 place where children regularly congregate. A releasee who is  
124 subject to this subparagraph may not relocate to a residence  
125 that is within 2,500 ~~1,000~~ feet of a public school bus stop.  
126 Beginning October 1, 2006 ~~2004~~, the commission or the department  
127 may not approve a residence that is located within 2,500 ~~1,000~~  
128 feet of a school, day care center, park, playground, designated  
129 school bus stop, or other place where children regularly  
130 congregate for any releasee who is subject to this subparagraph.  
131 On October 1, 2006 ~~2004~~, the department shall notify each  
132 affected school district of the location of the residence of a  
133 releasee 30 days prior to release and thereafter, if the  
134 releasee relocates to a new residence, shall notify any affected  
135 school district of the residence of the releasee within 30 days  
136 after relocation. If, on October 1, 2006 ~~2004~~, any public school  
137 bus stop is located within 2,500 ~~1,000~~ feet of the existing  
138 residence of such releasee, the district school board shall  
139 relocate that school bus stop. Beginning October 1, 2006 ~~2004~~, a  
140 district school board may not establish or relocate a public  
141 school bus stop within 2,500 ~~1,000~~ feet of the residence of a  
142 releasee who is subject to this subparagraph. The failure of the  
143 district school board to comply with this subparagraph shall not  
144 result in a violation of conditional release supervision. The



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

145 provisions of this subparagraph shall not apply to a bus stop  
146 specifically designated for an exceptional student. For  
147 purposes of this subparagraph, a 2,500-foot distance shall be  
148 measured as in s. 794.065.

149 3. Active participation in and successful completion of a  
150 sex offender treatment program with qualified practitioners  
151 specifically trained to treat sex offenders, at the releasee's  
152 own expense. If a qualified practitioner is not available within  
153 a 50-mile radius of the releasee's residence, the offender shall  
154 participate in other appropriate therapy.

155 4. A prohibition on any contact with the victim, directly  
156 or indirectly, including through a third person, unless approved  
157 by the victim, the offender's therapist, and the sentencing  
158 court.

159 5. If the victim was under the age of 18, a prohibition  
160 against contact with children under the age of 18 without review  
161 and approval by the commission. The commission may approve  
162 supervised contact with a child under the age of 18 if the  
163 approval is based upon a recommendation for contact issued by a  
164 qualified practitioner who is basing the recommendation on a  
165 risk assessment. Further, the sex offender must be currently  
166 enrolled in or have successfully completed a sex offender  
167 therapy program. The commission may not grant supervised contact  
168 with a child if the contact is not recommended by a qualified  
169 practitioner and may deny supervised contact with a child at any  
170 time. When considering whether to approve supervised contact  
171 with a child, the commission must review and consider the  
172 following:

173 a. A risk assessment completed by a qualified  
174 practitioner. The qualified practitioner must prepare a written

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

175 report that must include the findings of the assessment and  
176 address each of the following components:

177 (I) The sex offender's current legal status;

178 (II) The sex offender's history of adult charges with  
179 apparent sexual motivation;

180 (III) The sex offender's history of adult charges without  
181 apparent sexual motivation;

182 (IV) The sex offender's history of juvenile charges,  
183 whenever available;

184 (V) The sex offender's offender treatment history,  
185 including a consultation from the sex offender's treating, or  
186 most recent treating, therapist;

187 (VI) The sex offender's current mental status;

188 (VII) The sex offender's mental health and substance abuse  
189 history as provided by the Department of Corrections;

190 (VIII) The sex offender's personal, social, educational,  
191 and work history;

192 (IX) The results of current psychological testing of the  
193 sex offender if determined necessary by the qualified  
194 practitioner;

195 (X) A description of the proposed contact, including the  
196 location, frequency, duration, and supervisory arrangement;

197 (XI) The child's preference and relative comfort level  
198 with the proposed contact, when age-appropriate;

199 (XII) The parent's or legal guardian's preference  
200 regarding the proposed contact; and

201 (XIII) The qualified practitioner's opinion, along with  
202 the basis for that opinion, as to whether the proposed contact  
203 would likely pose significant risk of emotional or physical harm  
204 to the child.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

206 The written report of the assessment must be given to the  
207 commission.

208 b. A recommendation made as a part of the risk-assessment  
209 report as to whether supervised contact with the child should be  
210 approved;

211 c. A written consent signed by the child's parent or legal  
212 guardian, if the parent or legal guardian is not the sex  
213 offender, agreeing to the sex offender having supervised contact  
214 with the child after receiving full disclosure of the sex  
215 offender's present legal status, past criminal history, and the  
216 results of the risk assessment. The commission may not approve  
217 contact with the child if the parent or legal guardian refuses  
218 to give written consent for supervised contact;

219 d. A safety plan prepared by the qualified practitioner,  
220 who provides treatment to the offender, in collaboration with  
221 the sex offender, the child's parent or legal guardian, and the  
222 child, when age appropriate, which details the acceptable  
223 conditions of contact between the sex offender and the child.  
224 The safety plan must be reviewed and approved by the Department  
225 of Corrections before being submitted to the commission; and

226 e. Evidence that the child's parent or legal guardian, if  
227 the parent or legal guardian is not the sex offender,  
228 understands the need for and agrees to the safety plan and has  
229 agreed to provide, or to designate another adult to provide,  
230 constant supervision any time the child is in contact with the  
231 offender.

232  
233 The commission may not appoint a person to conduct a risk  
234 assessment and may not accept a risk assessment from a person  
235 who has not demonstrated to the commission that he or she has

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

236 met the requirements of a qualified practitioner as defined in  
237 this section.

238 6. If the victim was under age 18, a prohibition on  
239 working for pay or as a volunteer at any school, day care  
240 center, park, playground, or other place where children  
241 regularly congregate, as prescribed by the commission.

242 7. Unless otherwise indicated in the treatment plan  
243 provided by the sexual offender treatment program, a prohibition  
244 on viewing, owning, or possessing any obscene, pornographic, or  
245 sexually stimulating visual or auditory material, including  
246 telephone, electronic media, computer programs, or computer  
247 services that are relevant to the offender's deviant behavior  
248 pattern.

249 8. Effective for a releasee whose crime is committed on or  
250 after July 1, 2005, a prohibition on accessing the Internet or  
251 other computer services until the offender's sex offender  
252 treatment program, after a risk assessment is completed,  
253 approves and implements a safety plan for the offender's  
254 accessing or using the Internet or other computer services.

255 9. A requirement that the releasee must submit two  
256 specimens of blood to the Florida Department of Law Enforcement  
257 to be registered with the DNA database.

258 10. A requirement that the releasee make restitution to  
259 the victim, as determined by the sentencing court or the  
260 commission, for all necessary medical and related professional  
261 services relating to physical, psychiatric, and psychological  
262 care.

263 11. Submission to a warrantless search by the community  
264 control or probation officer of the probationer's or community  
265 controllee's person, residence, or vehicle.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

266 Section 3. Subsection (4) is added to section 948.30,  
267 Florida Statutes, to read:

268 948.30 Additional terms and conditions of probation or  
269 community control for certain sex offenses.--Conditions imposed  
270 pursuant to this section do not require oral pronouncement at  
271 the time of sentencing and shall be considered standard  
272 conditions of probation or community control for offenders  
273 specified in this section.

274 (4) Effective for probationers or community controllees  
275 whose crime was committed on or after October 1, 2006, and who  
276 are placed under supervision for violation of chapter 794, s.  
277 800.04, s. 827.071, or s. 847.0145, in addition to all other  
278 standard and special conditions imposed, the court must impose a  
279 prohibition on living within 2,500 feet of a school, public  
280 school bus stop located as provided in s. 947.1405(7)(a), day  
281 care center, park, playground, or other place where children  
282 regularly congregate as prescribed by the court. For purposes of  
283 this subsection, a 2,500-foot distance shall be measured as in  
284 s. 794.065.

285 Section 4. The amendments in this act to provisions  
286 restricting the residence of sexual offenders and sexual  
287 predators shall not require the relocation of such an offender  
288 who had established, prior to the effective date of this act, a  
289 residence not in compliance with the amendments to such  
290 restrictions contained in this act.

291 Section 5. This act shall take effect October 1, 2006.

292  
293 ===== T I T L E A M E N D M E N T =====

294 Remove the entire title and insert:  
295 An act relating to residence of sexual offenders and  
296 predators; amending s. 794.065, F.S.; revising provisions

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

97 relating to the residence of specified sex offenders;  
298 providing definitions; prohibiting the knowing rental or  
299 lease of a residence within 2,500 feet of specified  
300 locations to a restricted sex offender who intends to  
301 occupy the unit; providing a due diligence defense;  
302 providing criminal penalties; amending s. 947.1405, F.S.;  
303 revising conditional release program restrictions on the  
304 residence of certain sexual offenders; amending s. 948.30,  
305 F.S.; revising terms and conditions of probation or  
306 community control restricting the residence of persons  
307 convicted of certain sex offenses; providing that  
308 amendments in this act to provisions restricting the  
309 residence of sexual offenders and sexual predators shall  
310 not require the relocation of such an offender who had  
311 established, prior to the effective date of this act, a  
312 residence not in compliance with the amendments to such  
313 restrictions; providing an effective date.

314  
315 WHEREAS, recent attacks on children by registered sex  
316 offenders within this state have shed light on the necessity of  
317 providing greater protection to children from the risks posed by  
318 registered sex offenders, and

319 WHEREAS, the recidivism rate of sex offenders is high,  
320 especially for offenders who commit crimes involving children,  
321 and

322 WHEREAS, the Legislature is deeply concerned about the  
323 health, safety, and protection of all of Florida's residents,  
324 particularly its children, NOW, THEREFORE

# COMMITTEE MEETING REPORT

## Criminal Justice Committee

12/7/2005 9:15:00AM

Location: 404 HOB

HB 149 : DUI Education Courses

Favorable -

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Sandra Adams	X				
Bruce Antone	X				
Adam Hasner			X		
Wilbert Holloway	X				
Marcelo Llorente	X				
Ari Porth	X				
Everett Rice	X				
Dick Kravitz (Chair)			X		
<b>Total Yeas: 6</b>		<b>Total Nays: 0</b>			

Committee meeting was reported out: Wednesday, December 07, 2005 11:14:51AM

# COMMITTEE MEETING REPORT

## Criminal Justice Committee

12/7/2005 9:15:00AM

Location: 404 HOB

HB 155 : Vehicle Crashes

Favorable -

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Sandra Adams	X				
Bruce Antone	X				
Adam Hasner			X		
Wilbert Holloway	X				
Marcelo Llorente	X				
Ari Porth	X				
Everett Rice	X				
Dick Kravitz (Chair)			X		
<b>Total Yeas: 6</b>		<b>Total Nays: 0</b>			

### Appearances:

HB 155--Vehicle Crashes

Jamie McWilliams - Proponent

The Justin McWilliams "Justice for Justin" Act

5001 Log Wagon Road

Ocoee Florida 34761

Phone: 4072933955

Committee meeting was reported out: Wednesday, December 07, 2005 11:14:51AM



# COMMITTEE MEETING REPORT

## Criminal Justice Committee

12/7/2005 9:15:00AM

Location: 404 HOB

HB 187 : Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
<input checked="" type="checkbox"/> Favorable With Committee Substitute -					
Sandra Adams	X				
Bruce Antone	X				
Adam Hasner			X		
Wilbert Holloway	X				
Marcelo Llorente	X				
Ari Porth	X				
Everett Rice	X				
Dick Kravitz (Chair)			X		
<b>Total Yeas: 6</b>		<b>Total Nays: 0</b>			

### Appearances:

HB 187--Lawful Testing for Alcohol, Chemical Substances, or Controlled

Bob Dillinger (State Employee) - Opponent

Public Defender's Association

CJC

Tallahassee Florida 33762

Phone: 727-464-6866

HB 187--Lawful Testing for Alcohol, Chemical Substances, or Controlled

Richard Hersch - Opponent

FACDL

2937 SW 27th Avenue, #206

Coconut Grove Florida 33133

Phone: 305-358-0570

Committee meeting was reported out: Wednesday, December 07, 2005 11:14:51AM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 187

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION Y (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

ADOPTED

1 Council/Committee hearing bill: Criminal Justice Committee  
2 Representative(s) Adams offered the following:

3  
4 **Amendment (with directory and title amendments)**

5 Between lines 219 and 220 insert:

6 (f)1. The tests determining the weight of alcohol in the  
7 defendant's blood or breath shall be administered at the request  
8 of a law enforcement officer substantially in accordance with  
9 rules of the Department of Law Enforcement. Such rules must  
10 specify precisely the test or tests that are approved by the  
11 Department of Law Enforcement for reliability of result and ease  
12 of administration, and must provide an approved method of  
13 administration which must be followed in all such tests given  
14 under this section. However, the failure of a law enforcement  
15 officer to request the withdrawal of blood does not affect the  
16 admissibility of a test of blood withdrawn for medical purposes.

17 2.a. Only a physician, certified paramedic, registered  
18 nurse, licensed practical nurse, other personnel authorized by a  
19 hospital to draw blood, or duly licensed clinical laboratory  
20 director, supervisor, technologist, or technician, acting at the  
21 request of a law enforcement officer, may withdraw blood for the

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 purpose of determining its alcoholic content or the presence of  
23 chemical substances or controlled substances therein. However,  
24 the failure of a law enforcement officer to request the  
25 withdrawal of blood does not affect the admissibility of a test  
26 of blood withdrawn for medical purposes.

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

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

45 d. Nothing contained in s. 395.3025(4), s. 456.057, or any  
46 applicable practice act affects the authority to provide notice  
47 under this section, and the health care provider is not  
48 considered to have breached any duty owed to the person under s.  
49 395.3025(4), s. 456.057, or any applicable practice act by  
50 providing notice or failing to provide notice. It shall not be a

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

51 breach of any ethical, moral, or legal duty for a health care  
52 provider to provide notice or fail to provide notice.

53 e. A civil, criminal, or administrative action may not be  
54 brought against any person or health care provider participating  
55 in good faith in the provision of notice or failure to provide  
56 notice as provided in this section. Any person or health care  
57 provider participating in the provision of notice or failure to  
58 provide notice as provided in this section shall be immune from  
59 any civil or criminal liability and from any professional  
60 disciplinary action with respect to the provision of notice or  
61 failure to provide notice under this section. Any such  
62 participant has the same immunity with respect to participating  
63 in any judicial proceedings resulting from the notice or failure  
64 to provide notice.

65 3. The person tested may, at his or her own expense, have  
66 a physician, registered nurse, other personnel authorized by a  
67 hospital to draw blood, or duly licensed clinical laboratory  
68 director, supervisor, technologist, or technician, or other  
69 person of his or her own choosing administer an independent test  
70 in addition to the test administered at the direction of the law  
71 enforcement officer for the purpose of determining the amount of  
72 alcohol in the person's blood or breath or the presence of  
73 chemical substances or controlled substances at the time  
74 alleged, as shown by chemical analysis of his or her blood or  
75 urine, or by chemical or physical test of his or her breath. The  
76 failure or inability to obtain an independent test by a person  
77 does not preclude the admissibility in evidence of the test  
78 taken at the direction of the law enforcement officer. The law  
79 enforcement officer shall not interfere with the person's  
80 opportunity to obtain the independent test and shall provide the

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

81 person with timely telephone access to secure the test, but the  
82 burden is on the person to arrange and secure the test at the  
83 person's own expense.

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

89 a. The type of test administered and the procedures  
90 followed;

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

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

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

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

101  
102 Full information does not include manual, schematics, or  
103 software of the instrument used to test the person or any other  
104 material that is not in the actual possession of the state.  
105 Additionally, full information does not include information in  
106 the possession of the manufacturer of the test instrument.

107 5. A hospital, clinical laboratory, medical clinic, or  
108 similar medical institution or physician, certified paramedic,  
109 registered nurse, licensed practical nurse, other personnel  
110 authorized by a hospital to draw blood, or duly licensed

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

111 clinical laboratory director, supervisor, technologist, or  
112 technician, or other person assisting a law enforcement officer  
113 does not incur any civil or criminal liability as a result of  
114 the withdrawal or analysis of a blood or urine specimen, or the  
115 chemical or physical test of a person's breath pursuant to  
116 accepted medical standards when requested by a law enforcement  
117 officer, regardless of whether or not the subject resisted  
118 administration of the test.

119

120

121 ===== D I R E C T O R Y A M E N D M E N T =====

122 Remove line(s) 39-40 and insert:

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

125

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

127 Remove line(s) 9 and insert:

128 reference to treatment at a medical facility; revising language  
129 relating to information given to person tested; amending s.

000000



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

21 withdrawal of blood does not affect the admissibility of a test  
22 of blood withdrawn for medical purposes.

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

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

47 a. The type of test administered and the procedures  
48 followed;

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

000000



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

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

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

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

59  
60 Full information does not include manual, schematics, or  
61 software of the instrument used to test the person or any other  
62 material that is not in the actual possession of the state.  
63 Additionally, full information does not include information in  
64 the possession of the manufacturer of the test instrument.

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

77  
78  
79 ===== D I R E C T O R Y A M E N D M E N T =====

80 Remove line(s) 287-288 and insert:

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

81 Section 4. Paragraphs (a), (c) and (e) of subsection (1)  
82 of section 327.352, Florida Statutes, are amended to read:

83

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

85 Remove line(s) 25 and insert:  
86 to treatment at a medical facility; revising language relating  
87 to information given to person tested; amending s. 327.353,

3

Amendment No. (for drafter's use only)

Bill No. 187

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
 ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
 ADOPTED W/O OBJECTION Y (Y/N)  
 FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
 WITHDRAWN \_\_\_\_\_ (Y/N)  
 OTHER \_\_\_\_\_

**ADOPTED**

1 Council/Committee hearing bill: Criminal Justice

2 Representative(s) Porth offered the following:

3

4 **Amendment (with directory and title amendments)**

5 Remove everything after the enacting clause and insert:

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

8 316.1932 Tests for alcohol, chemical substances, or  
9 controlled substances; implied consent; refusal.--

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

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22 a law enforcement officer who has reasonable cause to believe  
23 such person was driving or was in actual physical control of the  
24 motor vehicle within this state while under the influence of  
25 alcoholic beverages. The administration of a breath test does  
26 not preclude the administration of another type of test. The  
27 person shall be told that his or her failure to submit to any  
28 lawful test of his or her breath will result in the suspension  
29 of the person's privilege to operate a motor vehicle for a  
30 period of 1 year for a first refusal, or for a period of 18  
31 months if the driving privilege of such person has been  
32 previously suspended as a result of a refusal to submit to such  
33 a test or tests, and shall also be told that if he or she  
34 refuses to submit to a lawful test of his or her breath ~~and his~~  
35 ~~or her driving privilege has been previously suspended for a~~  
36 ~~prior refusal to submit to a lawful test of his or her breath,~~  
37 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
38 any other penalties. The refusal to submit to a chemical or  
39 physical breath test upon the request of a law enforcement  
40 officer as provided in this section is admissible into evidence  
41 in any criminal proceeding.

42 b. Any person who accepts the privilege extended by the  
43 laws of this state of operating a motor vehicle within this  
44 state is, by so operating such vehicle, deemed to have given his  
45 or her consent to submit to a urine test for the purpose of  
46 detecting the presence of chemical substances as set forth in s.  
47 877.111 or controlled substances if the person is lawfully  
48 arrested for any offense allegedly committed while the person  
49 was driving or was in actual physical control of a motor vehicle  
50 while under the influence of chemical substances or controlled  
51 substances. The urine test must be incidental to a lawful arrest

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

52 and administered at a detention facility or any other facility,  
53 mobile or otherwise, which is equipped to administer such tests  
54 at the request of a law enforcement officer who has reasonable  
55 cause to believe such person was driving or was in actual  
56 physical control of a motor vehicle within this state while  
57 under the influence of chemical substances or controlled  
58 substances. The urine test shall be administered at a detention  
59 facility or any other facility, mobile or otherwise, which is  
60 equipped to administer such test in a reasonable manner that  
61 will ensure the accuracy of the specimen and maintain the  
62 privacy of the individual involved. The administration of a  
63 urine test does not preclude the administration of another type  
64 of test. The person shall be told that his or her failure to  
65 submit to any lawful test of his or her urine will result in the  
66 suspension of the person's privilege to operate a motor vehicle  
67 for a period of 1 year for the first refusal, or for a period of  
68 18 months if the driving privilege of such person has been  
69 previously suspended as a result of a refusal to submit to such  
70 a test or tests, and shall also be told that if he or she  
71 refuses to submit to a lawful test of his or her urine ~~and his~~  
72 ~~or her driving privilege has been previously suspended for a~~  
73 ~~prior refusal to submit to a lawful test of his or her breath,~~  
74 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
75 any other penalties. The refusal to submit to a urine test upon  
76 the request of a law enforcement officer as provided in this  
77 section is admissible into evidence in any criminal proceeding.

78 2. The Alcohol Testing Program within the Department of  
79 Law Enforcement is responsible for the regulation of the  
80 operation, inspection, and registration of breath test  
81 instruments utilized under the driving and boating under the

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

82 influence provisions and related provisions located in this  
83 chapter and chapters 322 and 327. The program is responsible for  
84 the regulation of the individuals who operate, inspect, and  
85 instruct on the breath test instruments utilized in the driving  
86 and boating under the influence provisions and related  
87 provisions located in this chapter and chapters 322 and 327. The  
88 program is further responsible for the regulation of blood  
89 analysts who conduct blood testing to be utilized under the  
90 driving and boating under the influence provisions and related  
91 provisions located in this chapter and chapters 322 and 327. The  
92 program shall:

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

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

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

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

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

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

108 g. Have the authority to approve or disapprove breath test  
109 instruments and accompanying paraphernalia for use pursuant to  
110 the driving and boating under the influence provisions and

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

111 related provisions located in this chapter and chapters 322 and  
112 327.

113 h. With the approval of the executive director of the  
114 Department of Law Enforcement, make and enter into contracts and  
115 agreements with other agencies, organizations, associations,  
116 corporations, individuals, or federal agencies as are necessary,  
117 expedient, or incidental to the performance of duties.

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

121 j. Enforce compliance with the provisions of this section  
122 through civil or administrative proceedings.

123 k. Make recommendations concerning any matter within the  
124 purview of this section, this chapter, chapter 322, or chapter  
125 327.

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

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

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

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

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

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170

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

(c) Any 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 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 or controlled 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. Any 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

000000



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

171 test of his or her blood, ~~if his or her driving privilege has~~  
172 ~~been previously suspended for refusal to submit to a lawful test~~  
173 ~~of his or her breath, urine, or blood,~~ is a misdemeanor. Any  
174 person who is capable of refusal shall be told that his or her  
175 failure to submit to such a blood test will result in the  
176 suspension of the person's privilege to operate a motor vehicle  
177 for a period of 1 year for a first refusal, or for a period of  
178 18 months if the driving privilege of the person has been  
179 suspended previously as a result of a refusal to submit to such  
180 a test or tests, and that a refusal to submit to a lawful test  
181 of his or her blood, ~~if his or her driving privilege has been~~  
182 ~~previously suspended for a prior refusal to submit to a lawful~~  
183 ~~test of his or her breath, urine, or blood,~~ is a misdemeanor.  
184 The refusal to submit to a blood test upon the request of a law  
185 enforcement officer is admissible in evidence in any criminal  
186 proceeding.

187 (f)1. The tests determining the weight of alcohol in the  
188 defendant's blood or breath shall be administered at the request  
189 of a law enforcement officer substantially in accordance with  
190 rules of the Department of Law Enforcement. Such rules must  
191 specify precisely the test or tests that are approved by the  
192 Department of Law Enforcement for reliability of result and ease  
193 of administration, and must provide an approved method of  
194 administration which must be followed in all such tests given  
195 under this section. However, the failure of a law enforcement  
196 officer to request the withdrawal of blood does not affect the  
197 admissibility of a test of blood withdrawn for medical purposes.

198 2.a. Only a physician, certified paramedic, registered  
199 nurse, licensed practical nurse, other personnel authorized by a  
200 hospital to draw blood, or duly licensed clinical laboratory

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

201 director, supervisor, technologist, or technician, acting at the  
202 request of a law enforcement officer, may withdraw blood for the  
203 purpose of determining its alcoholic content or the presence of  
204 chemical substances or controlled substances therein. However,  
205 the failure of a law enforcement officer to request the  
206 withdrawal of blood does not affect the admissibility of a test  
207 of blood withdrawn for medical purposes.

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

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

226       d. Nothing contained in s. 395.3025(4), s. 456.057, or any  
227 applicable practice act affects the authority to provide notice  
228 under this section, and the health care provider is not  
229 considered to have breached any duty owed to the person under s.  
230 395.3025(4), s. 456.057, or any applicable practice act by

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

231 providing notice or failing to provide notice. It shall not be a  
232 breach of any ethical, moral, or legal duty for a health care  
233 provider to provide notice or fail to provide notice.

234 e. A civil, criminal, or administrative action may not be  
235 brought against any person or health care provider participating  
236 in good faith in the provision of notice or failure to provide  
237 notice as provided in this section. Any person or health care  
238 provider participating in the provision of notice or failure to  
239 provide notice as provided in this section shall be immune from  
240 any civil or criminal liability and from any professional  
241 disciplinary action with respect to the provision of notice or  
242 failure to provide notice under this section. Any such  
243 participant has the same immunity with respect to participating  
244 in any judicial proceedings resulting from the notice or failure  
245 to provide notice.

246 3. The person tested may, at his or her own expense, have  
247 a physician, registered nurse, other personnel authorized by a  
248 hospital to draw blood, or duly licensed clinical laboratory  
249 director, supervisor, technologist, or technician, or other  
250 person of his or her own choosing administer an independent test  
251 in addition to the test administered at the direction of the law  
252 enforcement officer for the purpose of determining the amount of  
253 alcohol in the person's blood or breath or the presence of  
254 chemical substances or controlled substances at the time  
255 alleged, as shown by chemical analysis of his or her blood or  
256 urine, or by chemical or physical test of his or her breath. The  
257 failure or inability to obtain an independent test by a person  
258 does not preclude the admissibility in evidence of the test  
259 taken at the direction of the law enforcement officer. The law  
260 enforcement officer shall not interfere with the person's

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

261 opportunity to obtain the independent test and shall provide the  
262 person with timely telephone access to secure the test, but the  
263 burden is on the person to arrange and secure the test at the  
264 person's own expense.

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

270 a. The type of test administered and the procedures  
271 followed;

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

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

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

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

282  
283 Full information does not include manual, schematics, or  
284 software of the instrument used to test the person or any other  
285 material that is not in the actual possession of the state.  
286 Additionally, full information does not include information in  
287 the possession of the manufacturer of the test instrument.

288 5. A hospital, clinical laboratory, medical clinic, or  
289 similar medical institution or physician, certified paramedic,  
290 registered nurse, licensed practical nurse, other personnel

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

291 authorized by a hospital to draw blood, or duly licensed  
292 clinical laboratory director, supervisor, technologist, or  
293 technician, or other person assisting a law enforcement officer  
294 does not incur any civil or criminal liability as a result of  
295 the withdrawal or analysis of a blood or urine specimen, or the  
296 chemical or physical test of a person's breath pursuant to  
297 accepted medical standards when requested by a law enforcement  
298 officer, regardless of whether or not the subject resisted  
299 administration of the test.

300 Section 2. Section 316.1939, Florida Statutes, is amended  
301 to read:

302 316.1939 Refusal to submit to testing; penalties.--

303 (1) Any person who has refused to submit to a chemical or  
304 physical test of his or her breath, blood, or urine, as  
305 described in s. 316.1932, ~~and whose driving privilege was~~  
306 ~~previously suspended for a prior refusal to submit to a lawful~~  
307 ~~test of his or her breath, urine, or blood,~~ and:

308 (a) Who the arresting law enforcement officer had probable  
309 cause to believe was driving or in actual physical control of a  
310 motor vehicle in this state while under the influence of  
311 alcoholic beverages, chemical substances, or controlled  
312 substances;

313 (b) Who was placed under lawful arrest for a violation of  
314 s. 316.193 unless such test was requested pursuant to s.  
315 316.1932(1)(c);

316 (c) Who was informed that, if he or she refused to submit  
317 to such test, his or her privilege to operate a motor vehicle  
318 would be suspended for a period of 1 year or, in the case of a  
319 second or subsequent refusal, for a period of 18 months;

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

320 (d) Who was informed that a refusal to submit to a lawful  
321 test of his or her breath, urine, or blood, ~~if his or her~~  
322 ~~driving privilege has been previously suspended for a prior~~  
323 ~~refusal to submit to a lawful test of his or her breath, urine,~~  
324 ~~or blood,~~ is a misdemeanor; and

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

328  
329 commits a misdemeanor of the first degree, punishable ~~and is~~  
330 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

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

334 (3) The disposition of a criminal action under this  
335 section does not affect any administrative proceeding that  
336 relates to the suspension of a person's driving privilege. ~~The~~  
337 ~~department's records showing that a person's license has been~~  
338 ~~previously suspended for a prior refusal to submit to a lawful~~  
339 ~~test of his or her breath, urine, or blood shall be admissible~~  
340 ~~and shall create a rebuttable presumption of such suspension.~~

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

343 327.352 Tests for alcohol, chemical substances, or  
344 controlled substances; implied consent; refusal.--

345 (1)(a)1. The Legislature declares that the operation of a  
346 vessel is a privilege that must be exercised in a reasonable  
347 manner. In order to protect the public health and safety, it is  
348 essential that a lawful and effective means of reducing the  
349 incidence of boating while impaired or intoxicated be

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

350 established. Therefore, any person who accepts the privilege  
351 extended by the laws of this state of operating a vessel within  
352 this state is, by so operating such vessel, deemed to have given  
353 his or her consent to submit to an approved chemical test or  
354 physical test including, but not limited to, an infrared light  
355 test of his or her breath for the purpose of determining the  
356 alcoholic content of his or her blood or breath if the person is  
357 lawfully arrested for any offense allegedly committed while the  
358 person was operating a vessel while under the influence of  
359 alcoholic beverages. The chemical or physical breath test must  
360 be incidental to a lawful arrest and administered at the request  
361 of a law enforcement officer who has reasonable cause to believe  
362 such person was operating the vessel within this state while  
363 under the influence of alcoholic beverages. The administration  
364 of a breath test does not preclude the administration of another  
365 type of test. The person shall be told that his or her failure  
366 to submit to any lawful test of his or her breath will result in  
367 a civil penalty of \$500~~7~~ and shall also be told that if he or  
368 she refuses to submit to a lawful test of his or her breath and  
369 ~~he or she has been previously fined for refusal to submit to any~~  
370 ~~lawful test of his or her breath, urine, or blood,~~ he or she  
371 commits a misdemeanor in addition to any other penalties. The  
372 refusal to submit to a chemical or physical breath test upon the  
373 request of a law enforcement officer as provided in this section  
374 is admissible into evidence in any criminal proceeding.

375 2. Any person who accepts the privilege extended by the  
376 laws of this state of operating a vessel within this state is,  
377 by so operating such vessel, deemed to have given his or her  
378 consent to submit to a urine test for the purpose of detecting  
379 the presence of chemical substances as set forth in s. 877.111

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

380 or controlled substances if the person is lawfully arrested for  
381 any offense allegedly committed while the person was operating a  
382 vessel while under the influence of chemical substances or  
383 controlled substances. The urine test must be incidental to a  
384 lawful arrest and administered at a detention facility or any  
385 other facility, mobile or otherwise, which is equipped to  
386 administer such tests at the request of a law enforcement  
387 officer who has reasonable cause to believe such person was  
388 operating a vessel within this state while under the influence  
389 of chemical substances or controlled substances. The urine test  
390 shall be administered at a detention facility or any other  
391 facility, mobile or otherwise, which is equipped to administer  
392 such test in a reasonable manner that will ensure the accuracy  
393 of the specimen and maintain the privacy of the individual  
394 involved. The administration of a urine test does not preclude  
395 the administration of another type of test. The person shall be  
396 told that his or her failure to submit to any lawful test of his  
397 or her urine will result in a civil penalty of \$500, and shall  
398 also be told that if he or she refuses to submit to a lawful  
399 test of his or her urine ~~and he or she has been previously fined~~  
400 ~~for refusal to submit to any lawful test of his or her breath,~~  
401 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
402 any other penalties. The refusal to submit to a urine test upon  
403 the request of a law enforcement officer as provided in this  
404 section is admissible into evidence in any criminal proceeding.

405 (c) Any person who accepts the privilege extended by the  
406 laws of this state of operating a vessel within this state is,  
407 by operating such vessel, deemed to have given his or her  
408 consent to submit to an approved blood test for the purpose of  
409 determining the alcoholic content of the blood or a blood test

000000



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

410 for the purpose of determining the presence of chemical  
411 substances or controlled substances as provided in this section  
412 if there is reasonable cause to believe the person was operating  
413 a vessel while under the influence of alcoholic beverages or  
414 chemical or controlled substances and the person appears for  
415 treatment at a hospital, clinic, or other medical facility and  
416 the administration of a breath or urine test is impractical or  
417 impossible. As used in this paragraph, the term "other medical  
418 facility" includes an ambulance or other medical emergency  
419 vehicle. The blood test shall be performed in a reasonable  
420 manner. Any person who is incapable of refusal by reason of  
421 unconsciousness or other mental or physical condition is deemed  
422 not to have withdrawn his or her consent to such test. Any  
423 person who is capable of refusal shall be told that his or her  
424 failure to submit to such a blood test will result in a civil  
425 penalty of \$500 and that a refusal to submit to a lawful test of  
426 his or her blood, ~~if he or she has previously been fined for~~  
427 ~~refusal to submit to any lawful test of his or her breath,~~  
428 ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a  
429 blood test upon the request of a law enforcement officer shall  
430 be admissible in evidence in any criminal proceeding.

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

438 2. Only a physician, certified paramedic, registered  
439 nurse, licensed practical nurse, other personnel authorized by a

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

440 hospital to draw blood, or duly licensed clinical laboratory  
441 director, supervisor, technologist, or technician, acting at the  
442 request of a law enforcement officer, may withdraw blood for the  
443 purpose of determining its alcoholic content or the presence of  
444 chemical substances or controlled substances therein. However,  
445 the failure of a law enforcement officer to request the  
446 withdrawal of blood does not affect the admissibility of a test  
447 of blood withdrawn for medical purposes.

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

467 4. Upon the request of the person tested, full information  
468 concerning the results of the test taken at the direction of the  
469 law enforcement officer shall be made available to the person or

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

470 his or her attorney. Full information is limited to the  
471 following:

472 a. The type of test administered and the procedures  
473 followed;

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

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

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

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

484  
485 Full information does not include manual, schematics, or  
486 software of the instrument used to test the person or any other  
487 material that is not in the actual possession of the state.

488 Additionally, full information does not include information in  
489 the possession of the manufacturer of the test instrument.

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

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

500 officer, regardless of whether or not the subject resisted  
501 administration of the test.

502 Section 4. Section 327.369, Florida Statutes, is amended  
503 to read:

504 327.359 Refusal to submit to testing; penalties.--Any  
505 person who has refused to submit to a chemical or physical test  
506 of his or her breath, blood, or urine, as described in s.  
507 327.352, ~~and who has been previously fined for refusal to submit~~  
508 ~~to a lawful test of his or her breath, urine, or blood,~~ and:

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

513 (2) Who was placed under lawful arrest for a violation of  
514 s. 327.35 unless such test was requested pursuant to s.  
515 327.352(1)(c);

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

518 (4) Who was informed that a refusal to submit to a lawful  
519 test of his or her breath, urine, or blood, ~~if he or she has~~  
520 ~~been previously fined for refusal to submit to a lawful test of~~  
521 ~~his or her breath, urine, or blood,~~ is a misdemeanor; and

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

525  
526 commits a misdemeanor of the first degree, punishable ~~and is~~  
527 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

528 Section 5. This act shall take effect October 1, 2006.  
529

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

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

531 Remove the entire title and insert:

532 An act relating to lawful testing for alcohol, chemical  
533 substances, or controlled substances; amending s. 316.1932,  
534 F.S.; revising provisions to notify a person that refusal to  
535 submit to a lawful test of the person's breath, urine, or blood  
536 is a misdemeanor, to conform to changes made by the act;  
537 revising language relating to information given to person  
538 tested; amending s. 316.1939, F.S.; removing prior suspension as  
539 a condition for the commission of a misdemeanor by refusal to  
540 submit to a lawful test of breath, urine, or blood; amending s.  
541 327.352, F.S.; revising provisions to notify a person that  
542 refusal to submit to a lawful test of the person's breath,  
543 urine, or blood is a misdemeanor, to conform to changes made by  
544 the act; revising language relating to information given to  
545 person tested; amending s. 327.359, F.S.; removing prior  
546 suspension as a condition for the commission of a misdemeanor by  
547 refusal to submit to a lawful test of breath, urine, or blood;  
548 providing an effective date.

549

000000

# COMMITTEE MEETING REPORT

## Criminal Justice Committee

12/7/2005 9:15:00AM

Location: 404 HOB

### Summary:

#### Criminal Justice Committee

Wednesday December 07, 2005 09:15 am

HB 91	Favorable With Committee Substitute	Yeas: 6 Nays: 0
HB 149	Favorable	Yeas: 6 Nays: 0
HB 155	Favorable	Yeas: 6 Nays: 0
HB 187	Favorable With Committee Substitute	Yeas: 6 Nays: 0

Committee meeting was reported out: Wednesday, December 07, 2005 11:14:51AM