IN THE SUPREME COURT OF FLORIDA

CASE NO. 78,568

STATE OF FLORIDA

Petitioner,

vs.

ERIC NORSTROM,

Respondent.

****

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, FOURTH DISTRICT

****

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent was the defendant, and Petitioner the prosecution, in the criminal division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. In the brief, the parties will be referred to as they appear before this Honorable Court, except that Petitioner will also be referred to as the State. The symbol "R" refers to the record on appeal. The symbol "SR" refers to the supplemental record which is the transcript of the hearing on Respondent's motion to suppress. All emphasis has been added by Petitioner.

The opinion of the Fourth District Court of Appeal is appended to the brief as exhibit "A".

STATEMENT OF THE CASE

Respondent was charged by third amended information with vehicular homicide, reckless driving, and two counts of culpable negligence (R 1740-1741).

A motion to suppress the statements made by Respondent at the Boynton Beach police department was filed pretrial (R 1648-1649). A hearing was held on the motion (SR), Following the submission of memorandums of law by both parties (R 1671-1705), the trial court denied the motion to suppress (R 1706). After trial, the jury returned verdicts of guilty on all counts of the third amended information (R 1396, 1761). Respondent was sentenced as an adult to a downward departure sentence (R 1814-1816). Timely notice of appeal was filed (R 1817), and Respondent proceeded with his appeal in the Fourth District Court of Appeal.

The Fourth District Court of Appeal rendered its opinion reversing Respondent's convictions, and remanding for a new trial. Norstrom v. State, 16 F.L.W. D2063 (Fla. 4th DCA August 7, 1991) [exhibit "A"]. The reversal was predicated an the District Court's finding that Respondent's statements to the Boynton Beach police officers should have been suppressed as they were for the purpose of the accident investigation. The District Court certified the following question:

> Whether statements made in the course of a post accident investigation by an individual in police custody are privileged under §316.066, Florida Statutes, where Miranda warnings have been given and the individual is not told that he or she is required to answer the questions.

16 F.L.W. at D2065.

The state has sought the discretionary review of this court to address the certified question. This brief follows.

STATEMENT OF THE FACTS

The following testimany was adduced at the motion to suppress hearing. Officer Gordon Oliphant testified that he told Respondent that he was under arrest for a traffic accident with injuries (SR 7-8, 12-13). Respondent was in custody and was not free to leave (SR 10). Officer Oliphant believed that he handcuffed Respondent (SR 7, 16, 19). Respondent was turned over to the custody of Officer Lavoie at the Boynton Beach police department (SR 10).

Officer Marie Lavoie was dispatched to the scene of the accident. The area was dark. There were seventy-five to one hundred kids there. One person was deceased, one was quite seriously injured, and others had already been transported (SR 23). Officer Lavoie checked with Sergeant Kuss who briefed her, and she took over the scene. She came in contact with Respondent at the police department at 3:19 a.m. (SR 24). She read Respondent his Miranda rights prior to his giving his statement (SR 25). Respondent signed a ~~Misanda~~ rights card (SR 30).

The following testimony came forth at the trial. Dr. Jonathan Davis was on call at Bethesda Memorial Hospital and treated Charles Hamby for a severe head injury (R 573). Charles Hamby suffered a small fracture, and blood clots on the surface of the brain (R 574). The clots were removed surgically (R 577).

Dr. Oliver Jones, an orthopedic surgeon, treated Maria Feldman at the emergency roam at JFK hospital (R 580). She suffered a closed fracture of the left femur, which is the bone running from the hip to the knee. She had a partial amputation

of the tip of the great toe on the left foot (R 581). She had surgery on her toe and femur (R 582).

Officer Lavoie testified at trial. During her reconstruction of the accident, she located a skid mark seventy-eight feet long, which she attributed to Respondent's vehicle (R 610). She stated that Respondent was not free to leave prior to giving the statement, because she wanted to talk to him (R 629). Respondent's taped statement was played for the jury (R 636). The tape showed that Respondent was read and acknowledged his Miranda rights, and that he signed a Miranda rights card (R 637, 639-641). The statement given by Respondent related what occurred prior to, during, and after the accident (R 641-662), including Respondent's admission that he was travelling "about seventy" miles per hour (R 647).

Dwayne Penzenik estimated Respondent's speed at sixty miles per hour (R 740). Dwayne watched Respondent's car skid for quite some time (R 742). Eric Kovacs drove to the party with his cousin Dwayne Penzenik (R 852). He saw a blur of lights, and the car sliding (R 855). Maria Feldman saw Respondent's car coming, heard the sound of brakes, and heard Amber Hunter say "Oh, my god". Maria felt a lot of pain, but did not know where it was coming from (R 774). She estimated Respondent's speed at sixty miles per hour (R 800, 804).

Officer Rieger estimated that there were about one hundred people on High Ridge Road at the time of the accident (R 808). Officer Schike estimated the speed at seventy-eight to seventy-nine miles per hour (R 949). Roger Gillespie estimated that

there were about thirty to thirty-five cars, and seventy-five people at High Ridge Road (R 836). He said that Respondent was going between seventy and seventy-five miles an hour (R 837). Roger heard tires squealing, and saw the people who were hit knocked into a ditch (R 838).

Jim Blackhall heard the car going around seventy miles per hour. He ran, and when he woke up, he was on the pavement (R 905). Before Respondent came down the road everybody was standing out in the road (R 916). Debbie Rizza estimated that one hundred or one hundred and fifty people went to High Ridge Road (R 1013, 1029). There were a lot of people, and a lot of cars (R 1029). Debbie stated that she saw the RX-7 coming in to the area without any lights on (R 1017). Eric Coak estimated the crowd at between one hundred and fifty and two hundred people (R 1153). Respondent's best friend, Shane Kerfoot, estimated that there were between one hundred and one hundred fifty people at the party (R 1080, 1082). There were one hundred people at the party when Respondent left to take Monica Howell home (R 1101).

Amber Hunter was killed by the actions of Respondent while driving his vehicle, according to medical examiner Dr. Benz (R 993). Her injuries were consistent with being hit by a car at high speed (R 994). Similarly, Charles Hamby and Maria Feldman were injured as a result of Respondent's car hitting them (R 573-574, 581, 775, 982).

SUMMARY OF THE ARGUMENT

Respondent's motion to suppress was properly denied, as the statement given to Officer Lavoie was not for the purpose of the accident investigation. The evidence at the hearing on the motion to suppress supports the trial court's conclusion that Respondent was the subject of a custodial interrogation. The giving, and acknowledgment of, Miranda warnings belies the District Court's finding that the questioning was for the purpose of the accident investigation. Further, the evidence was cumulative to other evidence at trial, and any erroneous admission would be harmless. The legislature has amended the accident report statute to provide that statements made can be admissible as long as the person's rights against self-incrimination are not violated. In this case, Respondent waived those rights, and the statements would definitely be admissible under the amended statute. The certified question should be answered in the negative.

ARGUMENT

STATEMENTS MADE IN THE COURSE OF A POST ACCIDENT INVESTIGATION BY AN INDIVIDUAL IN POLICE CUSTODY ARE NOT PRIVILEGED UNDER §316.066, FLORIDA STATUTES, WHERE MIRANDA WARNINGS HAVE BEEN GIVEN AND THE INDIVIDUAL IS NOT TOLD THAT HE OR SHE IS REQUIRED TO ANSWER THE QUESTIONS, AND THE DISTRICT COURT'S OPINION SHOULD BE QUASHED.

The State asserts that the Fourth District Court of Appeal's opinion in the instant case was erroneously decided, and that the certified question should be answered in the negative. The statements made by Respondent were not privileged under §316.066, Fla.Stat., and were properly admitted at trial. The motion to suppress was properly denied by the trial court.

The following facts support the trial court's finding that Respondent was in custody at the time he gave his taped statement, Officer Rieger, not Officer Lavoie, prepared the accident report which was prepared for the state department of motor vehicles (R 1694; SR 26, 47). Officer Rieger was not present during the taped interview (SR 25). Respondent was read his Miranda[1] rights prior to the taking of the statement, and Respondent signed the rights card (SR 25, 30). The statement was voluntary (SR 25). Officer Oliphant testified that he told Respondent that he was under arrest for a traffic accident with injuries (SR 7, 8, 12-13, 17). Officer Oliphant believed he handcuffed Respondent (SR 7, 16). Sgt. Kuss told Officer Oliphant to place Respondent under arrest and take him to the station (SR 18). Although the form transcript contains language

[1] Miranda v. Arizona, 384 U.S. 436 (1966)

regarding not being under arrest, this was never communicated to Respondent (R 1681, SR 41).

Petitioner asserts that the trial court was correct when it ruled that Respondent was the subject of custodial interrogation (SR 84). Further, the trial court was correct when it compared what the actual statement contained with what is required on an accident report (SR 75). Brackin v. Boles, 452 So.2d 540 (Fla. 1984), is the seminal case interpreting the confidentiality portion of 8316.066, Fla.Stat. Brackin held that §316.066(4 only applies to those statements and communications that the driver of a vehicle is compelled to make to comply with his statutory duty under §316.066(1) and (2). Brackin, 452 So.2d at 544. Sections (1) and (2) address the written reports which must be made to the department of motor vehicles.[2] A review of the taped statement shows that the statement was not made for the purpose of the Department of Motor Vehicles accident report, but involved a far greater area. Compare R 1681-1693 with R 1694-1703. Brackin involved a departure from previous case law, which dealt with the artificial distinction between the "wearing of hats" in either the accident or criminal investigation phase. Brackin, 452 So.2d at 544.

The Fourth District's reliance on its opinion in West v. State, 553 So.2d 254 (Fla. 4th DCA 1989), for the proposition that despite Miranda warnings, a statement is not admissible unless the defendant is expressly told it is for the purpose of a

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[2] The actual accident report in this case is contained in the record at R 1694- 1703. §316.068, Fla.Stat. (1987) sets forth the statutory requirements for the accident report.

criminal investigation, is misplaced. The state submits that West was improperly decided, and should also be Overturned by this court. West also conflicts with the Fourth District Court's opinion in Alley v. State, 553 So.2d 354 (Fla. 4th DCA 1989), which held that the accident investigation phase continued until. the officer gave the defendant her Miranda warnings. Id., 553 So.2d at 355. 8316.062 and §316.066, Fla.Stat. provide for a duty to supply information for an accident investigation. Thus, once a person is told that he or she has the right to remain silent, how can the accident investigation be continuing? It is this contradiction which the Fourth District Court of Appeal overlooked.

Moreover, the improper admission of a statement privileged under this statute is subject to a harmless error analysis. Alley v. State, 553 So.2d 354 (Fla. 4th DCA 1989); McConnell v. United States, 428 F.2d 803 (5th Cir. 1970). Petitioner asserts that due to the overwhelminy evidence of Respondent's guilt of these charged crimes, that if the admission of this statement were improper, the admission would not have contributed to the jury verdict and would be harmless. State v. DiGuilio, 491 So.2d 1129, 1138 (Fla. 1986).

Further, the legislature has amended sections 316.062, 316.066 and 324.051 effective July I, 1991. These amendments support the state's argument that the certified question should be answered in the negative, because that is in fact what the amendments say. The amended statutes are appended as exhibit "C", and the relevant portions are set forth below:

§316.062. Duty to give information and render aid.

(3) The statutory duty of a person to make a report or give information to a law enforcement officer making a written report relating to an accident shall not be construed as extending to information which would violate the privilege of such person against self-incrimination.

§316.066. Written reports of accidents.

(4) Except as specified in this subsection, each accident report made by a person involved in an accident **and** any statement made by such person to a law enforcement officer for the purpose of completing an accident report required by this section shall be without prejudice to the individual so reporting. No such report or statement shall be used as evidence in any trial, civil or criminal. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement **made** to the officer by the person involved in the accident if that person's privilege against self-incrimination is not violated. . . .

§324.051. Reports of accidents; suspensions of licenses and registrations.

(1)(b) The department is hereby further authorized to require reports of accidents from individual owners or operators whenever it deems it necessary for the proper administration of this chapter, and these reports shall be made without prejudice **except** as specified in this subsection. No such report shall be used as evidence in any trial arising out of an accident. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the accident if that person's privilege against self-incrimination is not violated.

(Words underlined are additions).

Attached as exhibit "B" is the legislative history for the statutory amendments. The section-by-section analysis is as follows for these amendments.

> Section 13 amends s. 316.062, F.S., 1990 Supplement, to provide that a person's statutory duty to give information to a law enforcement officer relating to an accident shall not be construed as extending to information which would violate the person's privilege against self-incrimination.
>
> Sections 14 and 15 amend ss. 316.066 and 324.051, F.S., to provide for the admissibility of statements made in accident reporting when the privilege of self-incrimination is not violated.

Thus, on retrial, the statements found by the District Court to have been improperly admitted would be admissible since Respondent waived his right to remain silent, and his privilege against self-incrimination was not violated. Application of the amended statute on retrial would be entirely proper since the statute is one of procedure, and is not one involving a substantive right. There would be no ex post facto violation. The United States Supreme Court has held that a procedural change, even though it may work to the disadvantage of the defendant, does not create an ex post facto problem. Dobbert v. Florida, 432 U.S. 282, 293, 97 S.Ct. 2290, 53 L.Ed.2d 344, 356 (1977).

> Even though this change in the law obviously had a detrimental impact upon the defendant, the Court found that the Law was not ex post facto because it neither made criminal a theretofore innocent act, nor aggravated a crime previously committed, nor provided greater punishment, nor changed the proof necessary to convict.

Id. See also, Beazell v. Ohio, 269 U.S. 167, 46 S.Ct. 68, 70 L.Ed. 216 (1925); Hopt v. Utah, 110 U.S. 574, 4 S.Ct. 202, 28 L.Ed. 262 (1884).

Florida law also support the use of the amended statute on retrial. This court has held:

> As related to criminal law and procedure, substantive law is that which declares what acts are crimes and prescribes the punishment therefor, while procedural law is that which provides or regulates the steps by which one who violates a criminal statute is punished.

State v. Garcia, 229 So.2d 236 (Fla. 1969). This same quote was used by Justice Adkins in his concurring opinion in In re Florida Rules of Criminal Procedure, 272 So.2d 65 (Fla. 1972). He further explained:

> Substantive sights are those existing for their own sake and constituting the normal order of society, i.e., the rights of life, liberty, property and reputation. Remedial rights arise for the purpose of protecting or enforcing substantive rights.

Id. Under these tests, the amended statute is procedural in nature. Statutory changes in procedure apply to pending cases. City of Orlando v. Desjardins, 493 So.2d 1027 (Fla. 1986); Batch v. State, 405 So.2d 302 (Fla. 4th DCA 1981). Thus, it appears that the Fourth District's opinion was incorrectly decided since it did not take into account the legislative amendment,

Since Respondent was in custody at the time he gave his statements to the police, received his Miranda warnings and waived them, and was never told that he was required to answer the questions, the accident report privilege was inapplicable. The statements were properly admitted since Respondent's right against self-incrimination was not violated.

CONCLUSION

Wherefore, based on the foregoing argument and authorities, Petitioner respectfully requests that this Honorable Court answer the certified question in the NEGATIVE, QUASH the opinion of the Fourth District Court of Appeal, and REMAND this cause with directives that Respondent's convictions and sentences be AFFIRMED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I Hereby Certify that a true copy of the foregoing has been furnished by U.S. Mail to MICHAEL SALNICK, Esquire, 250 Australian Avenue South, #1303, West Palm Beach, FL 33401 this 4th day of October, 1991.

Of Counsel

IN THE SUPREME COURT OF FLORIDA

CASE NO. 78,568

STATE OF FLORIDA,

Petitioner,

vs.

ERIC NORSTROM,

Respondent.

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ON APPEAL FROM THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, FOURTH DISTRICT

****

APPENDIX TO

PETITIONER'S BRIEF ON THE MERITS

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EXHIBIT A

1990, the appellees being unable to secure financing, exercised their option to cancel the agreement and sought return of their deposit, which was denied to them unless they paid $2,500. Consequently, the appellee, as plaintiff, on **February** 28, 1990, filed the instant suit seeking return of their $10.000 dcaosit. The appellant, Rodell, engaged three different law firms, until A.J. Goodman answered the complaint on May 22, 1990. He represented the defendant until Oct. 23, 1990. The case **was** noticed for **a** non-jury trial on July 19, 1990, and was set for trial on Nov. 6, 1990. On Oct. 25, 1930, the firm of Quinton, Lummus, et al. filed **a** notice of appearance. They niovcd for a continuance for time to complete discovery on October 26, 1990, which was granted **ex** parte, apparently in error on October 30, 1990. Appellee's counsel, upon receiving notice of the order tesetting trial until December 26, 1990, filed an objection thereto, and moved to vacate the order. **At** hearing on their motion on November 5, 1990, one day before the trial was to commence, Rodell's counsel, as an additional ground for continuance alleged Rodell had health problems which precluded her from attending the trial on November 6, 1990. The trial court denied the motion for continuance and scheduled trial for November 6, 1990. The cause was tried in the defendant's absence, resulting in a judgment for the plaintiff in the amount of $10,000, plus interest and costs in the amount of $861. The trial court reserved jurisdiction for determining attorney's fees. The appellant contends the trial court abused its discretion in denying the motion for continuance, **and** in proceeding to trial and final judgment in absence of the appellant, defendant.

The appellees contend, and we agree, that on the state of this record it was not an abuse of discretion to deny the motion for continuance and that the trial court should be affirmed on the authority of *Behar v. Southeast Banks Trust* Co., *N.A.*, **374** So.2d 572 (Fla. 3d DCA 1979); *Stern v. Four Freedoms National Medical Services, Co.*, 417 So.2d 1085 (Fla. 3d DCA 1982); *Fuller v. Rinebolt*, 382 So.2d 1239 (Fla. 4th DCA 1980).

Affirmed.

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[1]Addendum to contract for sale and purchase. Record, Page 8.

* * *

Civil procedure—Third lawsuit was barred **by** voluntary dismissals **of** one lawsuit and counterclaim in another lawsuit, both **of** which were predicated on same underlying claim as that **asserted** in **third** lawsuit

UNITED TECHNOLOGIES COMMUNICATIONS COMPANY, Appellant, vs. CARLSON **CONSTRUCTION** COMPANY, and LIBERTY MUTUAL INSURANCE COMPANY, Appellees. 3rd District. Case No. 90-2156. Opinion filed August 6, 1991. **An** Appeal from the Circuit Court for Dade County, Herbert M. Klein, Judge. Eliot R. Weitzman, for appellant. O'Connor, Sinclair & Lemos and Christopher Lemos, for oppellees.

(Before BASKIN, JORGENSON and LEVY, JJ.)

(BASKIN, Judge.) United Technologies Communications Company [UTC] appeals a final judgment. We reverse.

Mercy Hospital contracted with UTC to install telecommunications equipment and contracted with Carlson Construction Company [Carlson] to remodel its third floor to accommodate the equipment, During the course of construction, Carlson drilled holes in the faurth story floor; these holes were not filled. Consequently, an acid solution being used to clean the fourth floor tile leaked through the holes and corroded the equipment on the third floor. UTC repaired the damaged equipment, Some time later, continuing acid corrosion made additional repairs necessary. UTC again made the repairs.

Mercy Hospital sued UTC arid Carlson to recover the cost of the repairs. Carlson cross-claimed against UTC for contribution, but later voluntarily dismissed its cross-claim. The trial court entered a directed verdict against Carlson for the cost of *the* initial repairs, and a judgment pursuant to a jury verdict against UTC and Carlson, jointly and severally for the amount of the subsequent repairs. UTC appealed. Carlson then filed a motion for judgment against UTC for the amount of the subsequent repairs. The trial court denied the motion. Carlson appealed. The appeals were consolidated. This court reversed the final judgment against UTC and ordered that judgment be entered in UTC's favor. *United Technologies Communication Co. v. Industrial Risk Ins.*, 501 So.2d 46 (Fla. 3d DCA 1387).

Carlson then sued UTC under **a** theory of equitable subrogation for the amount of its liability to Mercy, but Carlson voluntarily dismissed its action. After satisfying Mercy's judgment, Carlson again sued UTC for equitable subrogation to recover the expenses it incurred from UTC's failure to clean the equipment properly after the initial spill. The trial court entered final judgment **in** Carlson's favor. UTC appeals.

Pursuant to Rule 1.420, Florida Rules of Civil Procedure, a voluntary dismissal "operates as an adjudication upon the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim." The test for determining whether prior voluntary dismissals act to bar a subsequent lawsuit is enunciated in *Variety Children's Hosp. v. Mt. Sinai Hosp.*, 448 So.2d 54G (Fla. 3d DCA), *review denied*, 458 So.2d 274 (Fla. 1984). Here, as in *Variety Children's Hosp.*, the actions were all predicated on the same transaction and the same facts; "the same evidence would serve as the basis for proving the transaction . . . ." *Variety Children's Hosp.*, **443** So.2d at 548. Although Carlson advanced different theories for recovery, the three lawsuits are predicated on the same underlying claim. The third lawsuit was therefore barred by the dismissals in the first two actions. For these reasons, we reverse the final judgment and remand for entry of a judgment in UTC's favor.

Reversed and remanded.

* * *

Criminal law—Vehicular homicide—Culpable **negligence**—Reckless driving—Evidence—**Error to** admit statements **of** defendant **which** were nude for **purpose of** accident investigation—Question certified whether **statements** made **in** the course of a **post** accident **investigation by** on individual in police **custody** *are* privileged where Miranda **warnings** have **been given** and the **individual is not told that he or** she **is required** *to* **answer the questions—No error in** admitting evidence **of** defendant's **drinking on** night **of** offense although **defendant was not charged** with **alcohol** related offense—Such evidence relevant to **issue of reckless** driving

ERIC C. NORSTROM, Appellant, v. STATE OF **FLORIDA**, Appellee. **4th** District. Case No. 89-1966. Opinion filed **August** 7, 1991. Appeal from the Circuit Court for Palm **Beach** County; Marvin **U.** Mounts, Jr., Judge. Michael Salnick of Salnick & Krischer, West Palm Beach, for appellant. Robert **A.** Butterworth, Attorney **General**, Tallahassee, and Joan Fowler, Assistant Attorney General, West Palm Beach, for **appellee**.

(STONE, J.) We reverse appellant's conviction on counts of vehicular homicide, culpable negligence and reckless driving, and remand for **a** new trial, According to **a** statement made by the 16-year-old defendant, on the night of March 25, 1988, he drove to **a** party attended by fellow high school students. He drank about four eight-ounce cups **of** beer while there. After the party, the students gathered at the end of High Ridge Road, parking their cars along the side of the road and standing around near them and in the road at the end of the dead-end street. There were no street lights in the area.

Sometime before midnight, appellant **left** the High Ridge Road party to take a friend home. He then headed back to pick up another friend. He had difficulty finding the party **again.** He drove down the street at what he estimated to be seventy to seventy-five miles per hour. By the time he saw the people at the end of the street, it was too late to stop. He slammed on the brakes and lost control of his car. The car struck seven persons, killing one and seriously injuring **two** others. Several cars were also struck.

Following the accident, appellant told his friend to find a

police officer. The friend found Officer Oliphant who testified that his sergeant had requested him to pick up somebody involved in a traffic accident with injuries. The officer also testified that he could not be certain that he handcuffed appellant, but told him he was under arrest, and believed he told him it was for a traffic accident with injuries. He did not advise appellant of his rights.

Officer Thomas, who was with Officer Oliphant, subsequently testified that appellant was not handcuffed, and that he (Thomas) was not aware that appellant was under arrest. However, he conceded that it was possible that Officer Oliphant told appellant he was under arrest. The officers took appellant and his friend to the police station, and (although he did not smell any alcohol), Officer Oliphant later took appellant to Bethesda Hospital for a blood alcohol test.

Marie Lavoie, the officer in charge of the investigation, spoke with appellant at the police station, and later testified that he was not under arrest at that time. She testified that he was not in custody and that hc gave a taped statement which was part of the accident investigation. Officer Lavoie rend Miranda warnings to the appellant prior to questioning him. Officer Lavoie *also* told him:

> What I need to do here Eric so you understand is read you what we have the rights card here. Anytime we talk to anybody involving an investigation like we art: doing it is important that you understand what your rights arc. It doesn't mean anything other than that it is important to us that you understand what your rights are. Do you understand that? Okay, this is one of those things is a big deal and I want *to* make sure we're understanding each other Okay?

After appellant told Officer Lavoie and Detective Bean what he could recall about the accident and the events of that night, Officer Lavoie stated:

> Alright, Eric, I'm going to let you know at this point that we're gonna kinda change hats here, ok? It's an accident with serious injuries and we do have a fatality so pending on the results of the blood test that was taken from you at the hospital, if it comes hack that you were under the influence of alcohol at the time then proper charges will be filed. 1have to let you know that so I'm just going to ask you a few questions that would cover that aspect as far as the DUI charge, driving under the influence charge. Do you understand? ....

The officer then asked appellant some questions regarding his drinking that night, She later acknowledged that she made the "changing hats" remark as a way to signify to appellant that she was going from the accident portion of the investigation into the criminal portion of'the investigation.

The record does not reflect that the officer ever told the appellant that he was required to answer any questions or otherwise referred to his obligation under the accident investigation statute. We also note that the trial court recognized that even if appellant was not under "arrest," he was clearly being detained in police custody.

The blood alcohol test, approximately two and a half hours after the accident, revealed that appellant's blood alcohol content was .00. He was subsequently charged with vehicular homicide, reckless driving, and two counts of culpable negligence. Defense counsel filed a motion to suppress appellant's statement, which the court denied following a hearing. Appellant also filed a motion in limine requesting, in part, that the court preclude the state from introducing testimony regarding his drinking on the night of the accident. He maintained that any testimony about drinking would not be relevant. The court denied the motion.

Appellant argues that his statement was privileged under section 316.066, Florida Statutes (1988) because it was made for purposes of an accident investigation.

Section 316.066 (1388) provides, in part:

> Each accident report made by a person involved in an accident shall he without prejudice to *the* individual so reporting and shall be for the confidential use of the department or other state agencies having use of the records for accident prevention purposes.... No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident ....

The Florida Supreme Court addressed this statute as it pertained to the results of a blood alcohol test in *Brackin v. Boles*, 452 So.2d 540 (Fla. 1984):

> We now see no need for a distinction between the accident report investigation and the criminal investigation except as it pertains to a defendant's individual communications to a police officer or in a report submitted by a defendant in accordance with the statute...
>
> ...The statute only prohibits the use of communications "made by persons involved in accidents" *in order to avoid a fifth amendment violation*. The distinction this Court has previously made between investigations for accident rcport purposes and investigations for purposes of making criminal charges is artificial, is not a proper interpretation of the statute, and must be eliminated. We clearly and emphatically hold that the purpose of the statute is to clothe with statutory immunity only such statements and communications as the driver, owner, or occupant of a vehicle is compelled to make in order to comply with his or her statutory duty under section 316.066(1) and (2). (emphasis added)

In *Yost v. State*, 542 So.2d 419 (Fla. 4th DCA 1989), this court, citing to *Brackin*, held it to be reversible error for the trial court to allow testimony of the investigating officer that appellant advised him at the scene that he had consumed six or seven beers. Admitting such testimony violated section 316.066(4). See *also Thomas v. Gottlieb*, 520 So.2d 622 (Fla. 4th DCA 1988).

In *Alley v. State*, 553 So.2d 354 (Fla. 4th DCA 1989), *rev. denied*, 563 So.2d **634** (Fla. 1990), appellant appealed her conviction for driving under the influence-manslaughter. At the scene of the accident, appellant stated that she had been drinking. This court addressed whether appellant's statements at the scene and later at a medical clinic were given during the accident report phase of the investigation. It concluded:

> There is substantial competent evidence to conclude the accident investigation phase continued until the officer gave appellant her *Miranda* warnings at the medical clinic. Appellant made the questioned statements during the accident phase of the investigation.

Appellant argues that although the detectives gave him *Miranda* warnings prior to taking his statement, Officer Lavoie testified that she considered, at all relevant times, that she was investigating and questioning appellant about an accident and not a crime. Appellant maintains the accident investigation continued at least until Lavoie "changed hats." Consequently, appellant maintains that the fact that he was given *Miranda* warnings did not deprive him of the statutory privilege. *Set also Pastori v. State*, 456 So.2d 1212(Fla. 2d DCA 1984).

In *West v. State*, 553 So.2d 254 (Fla. 4th DCA 1989), this court recognized that it may be difficult for a defendant to realize when an accident investigation has ended and a criminal investigation has begun, and determined that unless a defendant has been apprised by police that the questions being asked are part of a criminal investigation the statements made in response to those questions will be deemed privileged. *West* held that the statements fell within the accident investigation privilege where appellant was subjected to express questioning while in police custody both before and after being informed of his *Miranda* rights. See also the pre-Brackin opinions, *Elder v. Robert J. Ackerman, Inc.*, 362 So.2d 999 (Fla. 4th DCA 1978), *cert. denied*, 368 So.2d 1366 (Fla. 1979); *Porter v. Pappas*, 368 So.2d 909 (Fla. 3d DCA 1979).

Appellant notes that his statement contained details about what happened before, during and after the accident that the jury could not have known absent its admission. He argues that the state made its case based primarily on his statement. At trial witnesses gave conflicting testimony about the speed he was traveling. Additionally, two officers gave conflicting testimony concerning

skid marks at the scene.

The state maintains that, notwithstanding Officer Lavoie's impressions, appellant was read the *Miranda* warnings and signed the rights card, One officer testified that he placed appellant under arrest for an accident with injuries and that appellant was in fact in custody at the time he gave the statement. The state notes that Officer Rieger prepared the initial accident report for Tallahassee, and he was not even present during Lavoie's questioning.

We conclude that it was an abuse of discretion to admit appellant's statement at trial. The officer's reading appellant *Miranda* warnings, alone, does not change the nature of the investigation. *West v. State*. Not only did the officer testify that she was conducting an accident investigation after the warnings were given, but the remarks she made at the time of the warning suggest that is precisely what she was doing. For example, she commented that she rends the rights "anytime we **talk** to anybody involving an investigation..." and that "it doesn't mean anything other than it is important to us that you understand what your rights are." The officers should have apprised appellant that their questions were part of a criminal investigation, if in fact they were, and because they did not do so, those statements appellant made while at the police station prior to the point at which Officer Lavoie "changed hats," even though informed of his *Miranda* rights, fell within the accident investigation privilege. *West*.

We are not insensitive to the argument that *Bracken v. Boles* is susceptible of a broader interpretation considering the Court's recognition that the purpose of the accident investigation statute is "to avoid a fifth amendment violation." This language, considered alone, might support a conclusion that a defendant, once given *Miranda* warnings, makes a statement at his own risk, particularly where he has not been told that he is required to answer. Under such an interpretation of *Bracken*, consideration would then be focused only on whether constitutional. rather than statutory, rights were invaded. However, this issue has already been resolved more narrowly by this court in *West*, in which we held:

> Recognizing that it may be difficult for a defendant to realize when an accident investigation **has** ended and a criminal investigation has begun, courts have held that unless a defendant has been apprised by police that the questions being asked are part of a criminal investigation, the statements made in response to those questions will be deemed privileged pursuant to § 316.066(4).
>
> ***
>
> Because the police never apprised West of the distinction between the accident and criminal phases of the investigation, we hold that the statements at issue fall within the accident investigation privilege and are thus inadmissible **pursuant** to § 316.066(4).

Id. at 256. Consequently, the court's admitting the statement was error. It is also apparent that the error was not harmless, *State v. DiGuilio*, 491 So.2d 1129 (Fla. 1986).

Appellant also asserts that he was not charged with an alcohol related offense and that the court erred in admitting any evidence regarding his drinking on the night of the accident. He notes that the blood test showed **a** blood alcohol level of .00 and detected no drugs. Two police officers, a medic, and **a** nurse testified that he did not appear impaired. His expert witness testified that, although it is very hard to extrapolate **back** in time, appellant's blood alcohol level at the time of the accident could have been between .03 and .04, and that an alcohol level under .05 is usually associated with sociability and lowered inhibitions, not impairment.

In *West*, this court also held:

> ...the trial court committed reversible error in admitting evidence that he had a trace of valium in his blood.... Since ... the valium had no measurable effect on West's driving, the evidence concerning the valium had no probative value or relevance the charge of driving tinder the influence of alcohol and it was unfairly prejudicial. Thus, it should have been excluded.

553 So.2d at 255.

Appellant contends that, as in West, the evidence concerning alcohol had no probative value or relevance to the charges brought against him. *See also State v. McClain*, *508* So.2d 1259 (Fla. 4th DCA 1987), *aff'd*, 525 So.2d 420 (Fla. 1988).

However, evidence that appellant drank about four beers is relevant on the issue of reckless driving. In *Filmon v. State*, 336 So.2d 586 (Fla. 1976), *cert. denied*, **430** U.S. 980, **97** S.Ct. 1675, 52 L.Ed.2d **375**, *reh'g. denied*, **431** So.2d 960, 97 S.Ct. 2689, 53 L.Ed.2d 279 (1977), the Supreme Court, in a case of manslaughter by culpable negligence, found that evidence that the appellant had imbibed significantly immediately preceding the tragic incident, although not significant to support the charge of intoxication, could be considered by the jury along with other acts of negligence. It could properly be considered not as **a** circumstance which renders acts wanton and reckless which are not otherwise so, hut upon the theory that, though not actually intoxicated, persons under tlic influence of alcohol to any considerable degree are more apt to be heedless, reckless, and daring than when free from such influence.

Here, the state notes that in closing argument it emphasized to the jurors that it was not contending appellant was drunk. The state did argue, however, that the alcohol had an effect on him. The trial court could conclude that the testimony was not unfairly prejudicial. In *State v. McClain, 525* So.2d 420 (Fla. 1988), the Florida Supreme Court noted that the trial court must weigh the danger of unfair prejudice against probative value and, in applying the balancing test, the trial court necessarily exercises its discretion. It noted that the same item of evidence may be admissible in one case and not in another, depending upon the relation of that item *to* the other evidence. Only when unfair prejudice substantially outweighs the probative value of the evidence is it excluded. We conclude that in this case the admission of evidence of drinking **was** not an abuse of discretion. We do not consider this result to be inconsistent with *West*.

Additionally, on remand, we caution the trial court to use care to restrict the introduction of unnecessary inflammatory evidence concerning the victims' physical condition and the details of surgical procedures, and to use particular caution against prejudicial use of family member witnesses for identification where other credible witnesses are available. ***Cf.*** *Welty v. State*, 402 So.2d 1159 (Fla. 1981); *Barnes v. State,* 348 So.2d 599 (Fla. 4th DCA 1377).

We do not address any sentencing issues, which are now moot. **As** to all other issues raised, **we** find no error or abuse of discretion. The judgment **and** sentence are reversed. We remand for a new trial.

We certify the following question to the supreme court:

> WHETHER STATEMENTS MADE IN THE COURSE OF **A** POST ACCIDENT INVESTIGATION BY **AN** INDIVIDUAL IN POLICE CUSTODY ARE PRIVILEGED UNDER $316.066, FLORIDA STATUTES, WHERE MIRANDA WARNINGS HAVE BEEN GIVEN **AND** THE INDIVIDUAL IS NOT TOLD THAT HE OR SHE **IS** REQUIRED TO **ANSWER** THE QUESTIONS.

(DELL, J., concurs. LETTS, J., concurring specially with opinion.)

(LETTS, J., concurring specially.) This is **a** case **of** some notoriety and I concur specially to reiterate that this **is** *not* **a drunk**-driving case. The appellant's blood alcohol content **was** zero.

As to the statute, section **3**16.066, unequivocally commands that an accident report by an involved person cannot be **used** as evidence in any trial arising out of that accident, I question the value of such legislation. Supposedly, it is predicated upon the overwhelming need that the state be apprised of the true nature of every accident so that the highways will be "safer for all society." *Department of Highway Safety and Motor Vehicles v.*

Corbin, 527 So.2d 868, 871 (Fla. 1st DCA), *rev. denied*, 534 So.2d 399 (Fla. 1988). Too often, however, it is used by defendant as a cloak to render incriminating statements inadmissible and contributes little, if anything, to the welfare of society. Such appears to me to be what happened here.

* * *

Criminal law—Error to impose public defender's fees without prior notice

EDDIE WRIGHT, Appellant, v. STATE OF FLORIDA, Appellee. 4th District. Case No. 90-2275. Opinion filed August 7, 1991. Appeal from the Circuit Court for Indian River County; Dwight L. Geiger, Judge. Richard L. Jorandby, Public Defender, and Nancy Perez, Assistant Public Defender, West Palm Beach, for appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Georgina Jimenez-Orosa, Assistant Attorney General, West Palm Beach, for appellee.

(PER CURIAM.) We affirm Wright's conviction and sentence in all respects, except one. We reverse the trial court's assessment of $190.00 for public defender's fees pursuant to section 27.56, Florida Statutes, because Wright did not have prior notice of the imposition of these fees. *See In the Interest of R.B.*, 16 F.L.W. 1797 (Fla. 4th DCA July 10, 1991) (prior notice is required before assessing public defender's fees).

AFFIRMED IN PART, REVERSED IN PART AND REMANDED. (DELL, GUNTHER and POLEN, JJ., concur.)

* * *

Criminal law—Double jeopardy—Separate convictions for sale and possession of same quantum of cocaine proper—Error to sua sponte dismiss possession of cocaine count

STATE OF FLORIDA, Appellant, v. SAMUEL LEE SAWYER, Appellee. 4th District. Case Nos. 90-2285 and 90-2297. Opinion filed August 7, 1991. Consolidated appeals from the Circuit Court for St. Lucie County; Charles E. Smith, Judge. Robert A. Butterworth, Attorney General, Tallahassee, and Don M. Rogers, Assistant Attorney General, West Palm Beach, for appellant. Richard L. Jorandby, Public Defender, and Robert Friedman, Assistant Public Defender, West Palm Beach, for appellee.

(PER CURIAM.) We reverse on the authority of *State v. McCloud*, 16 F.L.W. S194 (Fla. February 28, 1991). In *State v. McCloud*, the Florida Supreme Court held that a defendant may properly be convicted of both sale and possession of the same quantum of cocaine where the crimes occurred after the effective date of §775.021, Fla. Stat. (i.e., July 1, 1988).

Thus, in the instant case, the trial court reversibly erred in sua sponte dismissing the possession of cocaine count from each of the two informations, case no. 90-2285 and case no. 90-2297. Upon remand, the orders dismissing the possession of cocaine counts shall be vacated, and since the appellee pled *nolo contendere* to these counts the trial court should enter judgment and sentence accordingly.

REVERSED AND REMANDED WITH DIRECTIONS. (DOWNEY, GUNTHER and POLEN, JJ., concur.)

* * *

Dissolution of marriage—Child support—Modification—No abuse of discretion in increasing husband's child support obligation because of extraordinary medical and psychological expenses incurred on behalf of child who had threatened suicide—Circumstances justify award in an amount greater than that recommended by guidelines—No merit to husband's claim of reverse sexual discrimination

JOSEPH SILVER, Appellant, v. LINDA F. BORRELLI, a/k/a LINDA F. SILVER, Appellee. 4th District. Case No. 90-1911. Opinion filed August 7, 1991. Appeal from the Circuit Court for Broward County; Harry G. Hinckley, Jr., Judge. Joseph A. Murphy, III, Fort Lauderdale, for appellant. William H. Sharpe, Fort Lauderdale, for appellee.

(GARRETT, J.) The husband appeals the trial court's order that granted the wife's motion for modification of their final judgment of dissolution. We affirm.

When the parties got divorced in March of 1988 the husband had a gross annual income of about $5,000. The final judgment did not require him to pay any child support. In October of 1988, one of their two children threatened suicide. A month later, the wife moved for modification of the final judgment because of the extraordinary medical and psychological expenses incurred from the child's hospitalization. The trial judge referred the motion to a general master.

At the January, 1990 hearing before the general master, the husband filed a financial affidavit that showed his gross annual income had increased to $24,000 with a net monthly income of $1,300. The affidavit showed total monthly expenses of $3,499 which included household expenses of $1,075; however, the general master's report read in part:

> The Husband testified that he lives with someone else in whose house he resides . . . and he does not pay rent each and every month, but rather he sometimes pays half of the mortgage payment and sometimes pays the household expenses.

The affidavit also included the following:

EXPENSES RE: CHILDREN

Visitation [sic]	[$]430.00
Dr. Miranda	420.00
Dr. Iverson	350.00

The obligations to the doctors related to court ordered family counseling. The husband testified that he also had to pay consultants to supervise visitation if he wanted to see his children. It is unclear why visitation must be supervised at this time because in January of 1989 the trial court restored the husband's visitation rights without any condition of supervision.

The wife's financial affidavit showed a "Net Cash Flow Short-Fall Per Month" of $1,336 based on a net monthly income at $4,901 and total monthly expenses of $6,237. The affidavit showed monthly expenses of $1,971 for her household and $1,390 for her children. An unaudited "Statement Of Income" from the wife's professional association for the first eleven months of 1988 showed a net income of $51,225.41 and $18,000 for amortization and depreciation. In March of 1990, the general master found that "[t]he wife's actual money available from her business [was] probably higher than [was] reflected on her financial affidavit due to bookkeeping methods of depreciation as well as available assets in her business," but did not determine the actual amount.

The general master also found a change in circumstances ("the [h]usband's income ha[d] gone up"), granted the modification and recommended that the husband pay "one half of the expenses of counseling, Dr. Miranda and Dr. Iverson" and "$125 per child per month" as child support. The trial judge heard the husband's exceptions to the report of the general master and found that "the husband should pay a stated amount of cash . . . as child support and not be ordered to pay the unspecified expenses to Dr. Miranda and Dr. Iverson." The husband appealed after the trial court ordered him to pay $525 per month as child support.

As we read the dissent, Judge Anstead finds the "increase" in the husband's child support obligation to be excessive, not that the husband should not pay child support. Under the rationale of *Canakaris v. Canakaris*, 382 So.2d 1197 (Fla. 1980), we should not second guess the trial court's discretionary ruling that the husband pay $525 a month as child support. We conclude that reasonable persons would differ as to whether that amount was excessive.

If we attribute another $2,000 net monthly income to the wife the combined net monthly income of the parties would be $8,201. Under the amended child support guidelines which took effect on July 1, 1991, the figure for two children would be $1,763. § 61.30(b)(6)), Fla. Stat. (Supp. 1991). The wife's net monthly income would compute to be 84% of their combined net monthly income and she would be responsible for $1,481 of the guideline figure. *See* § 61.30(8) and (9), Fla. Stat. (1989). The husband would be responsible for the remaining $282 which is $243 a

EXHIBIT B

STORAGE NAME: h0343slz.cj **AS PASSED BY THE LEGISLATURE**
DATE: May 14, 1991 CHAPTER #: 91-255, Laws of Florida

RECEIVED

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIMINAL JUSTICE
FINAL FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: **CS/HB's 343, 759, 1139, & 2073**
RELATING TO: Driving Under the Influence

SPONSOR(S): Committee on Criminal Justice, Rep.(s) Wise, Stone, Bronson, Saunders, Cosgrove, and others

STATUTE(S) AFFECTED: **ss. 316.192, 316.193, 316.1932, 316.1933, 316.1934, 316.1937, 322.2615, 322.271, 322.28, 322.282, 322.291, 316.656, 322.64, 327.35, 327.352, 327.354, 327.36, 316.062, 316.066, 324.051,** and **90.803, F.s.**

COMPANION BILL(S): **S70, S276, S324, CS/S498, S988, 51704, H399**

COMMITTEES OF REFERENCE:
(1) CRIMINAL JUSTICE YEA 16 NAY 0
(2) APPROPRIATIONS YEA 29 NAY 0
(3)
(4)
(5)

****

I. SUMMARY:

This bill **amends** sections of the Florida Statutes regarding the offenses of driving under the influence (DUI) and operating **a vessel** while under the influence.

The bill provides **a** definition for "normal faculties". Breath alcohol tests, in addition to blood alcohol or sobriety tests, may be used to prove that **a** person **was** unlawfully under the influence while driving **a** vehicle or operating *a* vessel. Breath or blood alcohol **tests** may be admitted in evidence without the technician who administered the **test** if **the** tests are supported by the Department of Health **and** Rehabilitative Services (HRS) **approved** authenticating affidavit. Any person who is charged with DUI who and then appears at a medical facility may be required to have blood drawn from them for blood alcohol testing, regardless of whether or not they were involved in an accident. Such blood may be drawn by anyone **approved** by the medical facility to draw blood. Any person convicted of a fourth OK **subsequent** offense of DUI or operating a vessel while **under** the influence must pay **a** minimum fine of $1000.

Release of Persons Arrested For DUI

This bill provides **that** a person **arrested** for DUI shall be held in custody until either the person's blood alcohol level (BAL) is lower than **0.05** percent or the person's normal faculties are no longer impaired or eight hours have elapsed from the time the person was arrested.

DUI Program Participation

This bill provides that when **a person is convicted** of DUI or reckless driving which is found to be alcohol or **drug** related and that person

fails to report for or complete the court ordered DUI education or treatment, the Department of Highway Safety and Motor Vehicles (department) shall cancel the person's driving privilege. The department shall reinstate the driving privilege when the **person** completes the DUI education or reenters the court ordered treatment.

Recognition of Out-of-State Convictions

This bill provides that **a** previous conviction outside of this **state** for driving under the influence, driving while intoxicated, driving with an unlawful blood alcohol level, or any other similar alcohol or drug-related traffic offense, shell be considered a previous conviction under the DUI statutes. The blood alcohol level used by the other state as the threshold for the offense is not relevant **as** to whether or not the conviction will be considered by this state.

Ignition Interlock

This bill provides that any portion of **a** fine paid by a probationer for **a** DUI conviction **may** be used to defray the ***costs*** of installing an ignition interlock device into that person's motor vehicle if the court determines that the probationer is unable to **pay** such **costs.**

Enhanced Penalties if Minor in Vehicle at Time of DUI

This bill provides that any person who is convicted of driving under the influence, who at the time of the offense was accompanied by a person under the **age** of **18 years,** shall be punished by **a** fine of not **less** than $500 or more than $5,000 and may be imprisoned **up** to one year, depending on the number of previous convictions.

Administrative Suspensions

This bill amends the present traffic **statutes** which relate to administrative suspension of driver's licenses. The bill grants correctional officers the authority, the same authority which law enforcement officers currently have, to **suspend** the driving privilege of an arrested person who has been determined to have been driving with an unlawful blood alcohol level or a person who refused to submit to **a** breath, blood, or urine test.

This bill allows the department, in an informal or formal review, to consider any evidence submitted at or prior to the hearing, although the officer submitting that evidence did not submit such evidence within the specified 5-day period. Any materials submitted at or before the review hearing may be considered by the hearing officer. When witnesses are subpoenaed to a review hearing, the party that subpoenaed the witness must notify the appropriate state attorney of the issuance of said subpoena.

This bill provides that an informal review hearing will only be held pursuant to a request for such hearing. Currently, an informal review is conducted on each administrative suspension for driving with an unlawful blood alcohol level or refusal if **a** formal review is not requested.

When a person requests a formal review hearing, if such hearing is not scheduled within 30 days the department shall invalidate the suspension or disqualification. If the scheduled hearing is continued by the department, then the department shall issue a temporary permit until the hearing is held if the person is otherwise eligible for the driving privilege. However, the temporary permit shall not authorize the driver to operate a commercial motor vehicle.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently in DUI prosecutions, evidence of blood alcohol level can be offered where there was a breath alcohol test administered in accordance with procedures and with devices approved by HRS. The blood alcohol level is calculated according to a mathematical formula which converts breath test results into blood alcohol levels.

The punishment for a third DUI conviction under s. 316.193, F.S., includes a fine of between $1,000 and $2,500, as well as imprisonment for up to one year. For a third DUI conviction within five years, the sentencing court is required to impose a jail term of at least 30 days. For a third DUI conviction within ten years, the court is required to revoke the driving privilege of the person for at least ten years.

Currently, a fourth or subsequent DUI conviction under s. 316.193, F.s., is a third degree felony, punishable as provided in Chapter 775, F.S., (imprisonment not to exceed five years and/or a fine not to exceed $5,000). If the three previous DUI convictions are not substantiated, the offense is treated as a first degree misdemeanor. It is possible to be fined for less than $1,000 for a fourth or subsequent DUI conviction, whereas $1,000 is the minimum mandatory fine for a third DUI conviction.

First, second and third convictions for operating a vessel while under the influence carry the same penalties as the corresponding offense under the DUI statute except there is no license suspension because there is no requirement for a license to operate a vessel.

Currently, any person who accepts the driving privilege is deemed to have given consent to submit to an approved chemical or physical test to determine the alcoholic content of the blood or the presence of chemical or controlled substances if such person is lawfully arrested for any DUI offense. Additionally, any person is also deemed to have given consent to submit to an approved blood test for the purpose of determining impairment if such person appears for treatment at a medical facility as a

result of his involvement as a driver in a motor vehicle accident and the administration of a breath or urine test is impossible or impractical.

Currently, a law enforcement officer may use reasonable force, if necessary, to require a person to submit to a blood test to determine impairment if the officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence caused the death or serious bodily injury of a human being.

Authorization to take blood samples for impairment testing is restricted to specified personnel such as a physician, certified paramedic, registered nurse, licensed practical nurse, duly licensed clinical laboratory technologist or technician.

Section 316.193(1), F.S., describes how the offense of driving under the influence may be proven in either of two ways: a) by proof of impairment, or b) by proof of a blood alcohol level of 0.10 percent or higher. To prove impairment, evidence must demonstrate that a person was affected by alcoholic beverages or a certain chemical or controlled substances to the extent that his normal faculties were impaired. No definition of "normal faculties" is not provided in the DUI statute.

Blood alcohol tests are conducted with instruments, operators, and procedures approved by HRS. In DUI prosecutions, the test operators must appear in court to testify as to: their certification; the registration, certification, maintenance of the testing instrument; and the results of the blood alcohol test.

Currently, any reports or statements made by a person involved in an accident to a law enforcement officer can not be used as evidence in any trial, civil or criminal.

Release of Persons Arrested for DUI

Section 316.193, F.S., describes the offense of DUI and provides penalties for DUI violations. Currently there is no language in the statutes which establish a standard for the physical condition a person arrested for DUI should be in prior to being released from custody.

Section 907.041, F.S., provides the policies and rules for pretrial detention and release of any arrested person. It is the policy of this state that persons committing serious criminal offenses, posing a threat to the safety of the community, posing a threat to the integrity of the judicial process, or failing to appear at trial be detained upon arrest. It is the intent of the legislature that the primary consideration be the protection of the community from the risk of physical harm to persons.

The Constitution of the State of Florida provides: Article 1 section 14:

SECTION 14. Pretrial release and detention.--Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trail, or assure the integrity of the judicial process, the accused may be detained.

Section 903.047 F.S., provides that a person who is arrested may be released on bail, bond, own recognizance, or some other form if that person meets the conditions of pretrial release. The conditions of pretrial release require that the person refrain from any criminal activity and that the person have no contact with the victim, except as provided by law.

DUI Program Participation

Subsection (4) of section 316.192, F.S., relating to reckless driving and subsection *(5)* of section 316.193, F.S., relating to DUI require the court to order any person convicted of DUI or reckless driving with alcohol or drugs as a significant factor to complete the DUI substance abuse program provided in s. 316.193(5) within a reasonable period of time. There is no legislatively established procedure for actions against the person's driving privilege if the person fails to report to or complete the court ordered program.

Recognition of Out-of-State Convictions

Section 316.193(7)(d), Florida Statutes, a previous conviction outside of this state for any substantially similar alcohol or drug-related traffic offense, shall be considered as a previous conviction for a violation of this section. The blood alcohol used by the other state as the threshold for the offense is currently considered when determining whether the out-of-state offense is substantially similar to a violation of this section.

Ignition Interlock

Section 316.1937(2)(d), Florida Statutes, 1990 Supplement, provides that when the court imposes the use of an ignition interlock device, the court shall determine whether the probationer is able pay to for the installation of the device. Current statutes makes no provision for the cost of installing the device when the court determines that the probationer is unable to pay the cost.

Enhanced Penalties if Minor in Vehicle at Time of DUI

Section 316.193(5), Florida Statutes, provides an enhanced penalty for any person who is convicted of driving under the influence with a blood alcohol level of 0.20 percent or higher. The person

shall be punished by a fine of not less than $500 or more than $5,000 and imprisonment up to one year, depending on the number of previous convictions for driving under the influence.

Administrative Suspensions

Sections 322.2615 and 322.64 F.S., relate to the suspension of driving privileges and the disqualification of commercial motor vehicle driving privileges for driving with an unlawful blood alcohol level or for refusing to submit to a requested breath, blood, or urine test. These sections grant law enforcement officers the authority to take the person's driver's license and issue that person a suspension or notice of disqualification if the law enforcement officer has probable cause to believe such person was driving with an unlawful blood alcohol level or refused to submit to a breath, blood, or urine test. After taking the driver's license the officer shall give the person a 7-day temporary driving permit for business or employment purposes only.

The driver may request a formal or informal review of the suspension by the department within 10 days after the date of the arrest or issuance of the notice of suspension. At the hearing, the department will not consider any material received more than 10 days after the suspension. The law enforcement officer must forward to the department all materials relating to the suspension within five days of the arrest or suspension.

Unless the person requests a formal review, the department, through a hearing officer, shall conduct an informal review hearing. When an informal review is conducted, notice of the department's findings shall be sent to the person's last known address as shown on the department's records and to the address provided in the law enforcement officer's report if such address differs from the address of record.

If the person requests a formal review hearing, then such hearing must be held within thirty days after such request. Either party may subpoena witnesses for the formal review hearing. If the department fails to conduct a formal review hearing within thirty days after a hearing is requested the department shall issue a temporary driving permit.

If the suspension of a person's driving privilege is sustained, the person is not eligible to receive a driver's license or business or employment permit until 30 days after their temporary permit expires.

Authority to Suspend Driver's Licenses

The department has the authority to suspend the driver's license of an operator or chauffeur without a hearing upon an appropriate showing of records or other sufficient evidence. The duration of the suspension depends on the offense or matter giving rise to the suspension. Suspension may be reviewed by writ of certiorari.

B. EFFECT OF PROPOSED CHANGES:

The bill expands the means of proving **a** DUI offense by providing that driving with **a** specified breath alcohol level constitutes driving under the influence. The standard for measuring breath alcohol level is grams of alcohol **per** 210 liters of breath.

Section 316.193(2)(b), **F.S.,** is amended to provide for **a** minimum fine of $1,000 for **a** fourth or subsequent DUI conviction.

Section 316.1932(1)(c), **F.S.,** is amended to provide that a person impliedly consents to **a** chemical or physical test to determine the alcoholic content of the person's breath upon the person's acceptance of the driving privilege. Additionally, the section is amended to delete the requirement that **a person** be involved **as a** driver in a motor vehicle accident in order to be deemed to **have** consented to a blood test to determine impairment upon such person's appearance at a medical facility for treatment.

The bill provides that all personnel authorized by hospitals to take blood samples and certain employees of clinical laboratories are authorized to take such samples for blood alcohol level testing under the DUI statute.

Section 316.1934(1), F.S., is amended to provide a definition for "normal faculties" which includes functions such as the ability to see, hear, walk, talk, judge distances, drive an automobile, act in emergencies, and, in general, normally perform the many mental and physical acts of daily life.

Section 316.1934(5), F.S., is created to provide for the admissibility of alcohol impairment test results into evidence in **a** DUI prosecution if accompanied by an affidavit attesting to their authenticity in a form provfded by the Department of Wealth and Rehabilitative Services. These affidavits, if in proper form, are exempt from **the** evidentiary rule against **hearsay.** The right of the accused to subpoena the test operator is reserved.

This bill amends pertinent statutes relating to alcohol or drug impairment to provide for unlawful breath alcohol levels.

This bill provides for the admissibility at trial of **a** person's statements made in accident reporting when the privilege against self-incrimination is not violated,

Release of **Persons** Arrested for DUI

This bill creates a section in the statutes to provide that any **person** arrested for DUI in violation of section 316.193(1)(a) or 316.193(1)(b), **F.S.,** may not be released if either his normal faculties continue to be impaired or his **BAL** continues to be 0.05 percent or more, or eight hours have not elapsed since he was arrested.

DUI Program Participation

This bill amends s. 316.192(4), F.S., relating to reckless driving and s. 316.193(5), F.S., relating to DUI, to provide that when a person has been ordered by a court to attend a DUI substance abuse education course or treatment and that person fails report to or complete the court ordered program the department shall upon notification cancel that person's driving privilege. The Department shall reinstate the person's driving privilege when that person completes the substance abuse education course or reenters treatment.

Ignition Interlock

This bill amends s. 316.1937(2)(d), F.S., to provide that any portion of a fine paid by a probationer far violating section 316.193, F.S., may be used to defray the costs of installing an ignition interlock device into that person's motor vehicle if the court determines that the probationer is unable to pay the costs.

Enhanced Penalties if Minor in Vehicle at Time of DUI

This bill amends s. 316.193(5), F.S., to provide that any person who is convicted of driving under the influence, who at the time of the offense was accompanied by a person under the age of 18 years or who, as the statutes already provides, had a blood alcohol level of 0.20 or higher, shall be punished by a fine of not less than $500 or more than $5,000 and may be imprisoned up to one year, depending on the number of previous convictions.

Recognition of Out-Of-State Convictions

This bill amends s. 316.193, F.S. to provide the State of Florida will recognize similar out-of-state convictions for DUI, DWI, or driving with an unlawful blood alcohol level for the purpose of enhancing DUI penalties.

Administrative Suspensions

This bill amends ss. 322.2615, and 322.64, F.S., relating to suspension of driver's licenses for unlawful blood alcohol levels and for refusal to submit to breath, blood, or urine tests. A correctional officer, as well as a law enforcement officer, may an behalf of the department, suspend or disqualify the driving privilege of a person who has committed the violation of driving with an unlawful blood alcohol level ox who refused to submit to a lawful request for a breath, blood, or urine test,

If the driver requests a formal or informal review hearing of the suspension or disqualification, the hearing officer may consider and use evidence relevant to the suspension which is presented prior to or during the hearing. The hearing officer is no longer precluded from considering materials at the review hearing which the law enforcement officer failed to submit within the 5-days after the arrest or suspension,

The bill provides that an informal review hearing will be conducted only upon request. Currently an informal hearing is held, whether requested or not, in every administrative suspension or disqualification which results from the offense of driving with an unlawful blood alcohol level or refusal to submit to a breath, blood, or urine test.

When a person requests a formal review hearing either the department or the person may subpoena witnesses. If a witness fails to appear, the subpoena may be enforced through contempt of court proceedings in the circuit court in the judicial circuit where the witness resides.

When a person requests a formal hearing and the department fails to schedule that hearing to be held within 30 days, instead of issuing a temporary permit the department shall invalidate the suspension or disqualification. If the hearing is continued by the department, then the department shall issue a temporary permit until the hearing is held, if the person is otherwise eligible for the driving privilege.

When the suspension of a person's driver's license or driving privilege is sustained, if that person is otherwise eligible to drive, he will no longer have to wait until 30 days after his temporary permit expires before he can receive a business or employment permit. However, such permit does not authorize the operation of a commercial vehicle.

Authority to Suspend Driver's Licenses

When a person whose driver's license is suspended for five or more years for a violation of ss. 316.193 or 322.64, F.S., is convicted of violating s. 322.34, F.S., the department shall reinstate the full term of the current suspension or revocation.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 316.193, F.S., to add breath alcohol level to the provisions which set out the measure of a person's relative influence under alcohol. Section 1 also provides for a minimum mandatory fine of $1,000 upon the fourth or subsequent DUI conviction.

Section 2 amends s. 316.1932, F.S., to provide a standard for measuring breath alcohol level and to authorize the use of breath alcohol level in addition to blood alcohol level. Section 316.1932, F.S., is also amended *to* provide that a person impliedly consents to a test for breath alcohol level upon the person's acceptance of the driving privilege and to delete the requirement that the medical facility blood test impliedly consented to has to be as a result of the driver's involvement in an accident. Section 2 also adds all personnel authorized by

hospitals and certain persons employed by laboratories to take blood samples for the purpose of blood alcohol testing.

Section 3 amends s. 316.1933, F.S., to add all personnel authorized by a hospital to draw blood and certain clinical laboratory personnel to the list of persons authorized to withdraw blood for impairment testing.

Section 4 amends s. 316.1934, F.S., to provide a definition of "normal faculties". The section also provides an exception to the hearsay rule in s. 90.803(8), F.S. by allowing impairment test results, when accompanied by an affidavit as to their authenticity, to be admissible in evidence.

Section 5 amend s. 316.656, F.S., relating to mandatory adjudication, to add breath alcohol level to the provisions which set out the measure of a person's relative influence under alcohol.

Section 6 amend s. 322,291, F.S., driver improvement schools, to add breath alcohol level to the provisions which set out the measure of a person's relative influence under alcohol.

Section 7 amends s. 327.35, F.S., relating to operating a vessel while under the influence, to add breath alcohol provisions which set out the measure of a person's relative influence under alcohol.

Sections 8 through 10 amend ss. 327.352, 327.354, and 327.36, F.S., to add breath alcohol level to the provisions which set out the measure of a person's relative influence under alcohol.

Section 11 reenacts various sections for the purpose of incorporating the amendments to ss. 316.193, 316.1932, 316.1933, 316.1934, and 327.35, F.S.

Section 12 amends s. 90.803, F.S., 1990 Supplement, to provide a hearsay exception for the admissibility of an affidavit containing the results of any impairment test as described in Section 4 of the bill.

Section 13 amends s. 316.062, F.S., 1990 Supplement, to provide that a person's statutory duty to give information to a law enforcement officer relating to an accident shall not be construed as extending to information which would violate the person's privilege against self-incrimination.

Sections 14 and 15 amend ss. 316.066 and 324.051, F.S., to provide for the admissibility of statements made in accident reporting when the privilege of self-incrimination is not violated.

Section 16 amends s. 316.1937, F.S., 1990 Supplement, to provide for the use of any portion of a fine paid by a probationer to defray the cost of installing an ignition interlock device.

Section 17 amends subsection (4) of section 316.192, Florida Statutes, relating to reckless driving, as described above.

Section 18 amends section 316.193, Florida Statutes, relating to driving under the influence, as described above.

Section 19 amends section 316.1937, Florida Statutes, relating to ignition interlock devices, as described above.

Section 20 amends section 322.2615, Florida Statutes, 1990 Supplement, relating to administrative suspension of driver's licenses, as described above.

Section 21 amends section 322.264, Florida Statutes, relating to habitual traffic offenders, as described above.

Section 22 amends section 322.271, Florida Statutes, relating to the department's authority to suspend or revoke driver's licenses, as described above.

Section 23 amends section 322.282, Florida Statutes, as amended by Chapter 89-525, Laws of Florida, as described above.

Section 24 amends section 322.28, Florida Statutes, relating to period of suspension or revocation, as described above.

Section 25 amends section 322.64, Florida Statutes, 1990 Supplement, relating to administrative disqualification of driving privileges, as described above.

Section 26 conforms section 322.291, Florida Statutes, relating to driver improvement schools, to the change in section 322.03, Florida Statutes.

Section 27 provides a severability clause which states that if one section of this statute is held unconstitutional the remaining sections shall remain in effect.

Section 28 provides that this act shall take effect July 1, 1991.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

However, the Department of Highway Safety and Motor Vehicles indicates the fiscal impact will be minimal.

The DUI Programs office will incur no fiscal impact.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate. However, there should be a revenue increase from the collection of fines from DUI offenders who have minors in the vehicle. Also, there may be an increase in monies collected from fines from persons on their fourth or subsequent DUI conviction since the bill includes a minimum fine of $1,000 for such offenses.

There may be some adverse impact on local jails which are required to hold persons arrested for DUI.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. Persons convicted under this bill may incur greater fines and serve longer jail sentences in instances where they have a minor in the car at the time of the DUI.

2. Direct Private Sector Benefits:

Indeterminate. Fines paid for a violation of s. 316.193 F.S., may be used to defray the cast of installing an ignition interlock device.

3. Effects on competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

Revenue will be increased by the doubling of the minimum fine collected from DUI offenders with a minor in the vehicle. Since there are no available figures on passengers in relation to DUI (much less the age of such passengers), an accurate estimate of how many of the 67,032 (1989 figures) DUI offenders would be required to pay this additional fine to the cities or counties is impossible.

The overall fiscal impact of the bill should be minimal.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

According to HRS, there is significant controversy concerning the correct average conversion ratio when converting breath test results into blood alcohol levels. The use of breath alcohol test results will likely reduce court challenges to breath test results in DUI prosecutions. Several states, including Alaska, Illinois, Oklahoma and Washington, define DUI violations in terms of either blood alcohol or breath alcohol.

The authorization of more people to take blood samples will facilitate the process of drawing blood for blood alcohol level testing as well as reduce challenges to such testing.

Rep. stone states that this bill prevents persons arrested for DUI from returning to the streets and continuing to drive after they are released while their ability to drive is still diminished. This bill enhances the safety of other drivers and pedestrians by keeping these persons from behind the wheel of a vehicle.

The Florida Sheriffs Association, which did not take a position on the issue of holding persons arrested for DUI, raised a concern about the availability of facilities and personnel, especially at the smaller sheriff's agencies, to handle persons whose detention is extended as a result of this legislation. The Metro-Dade Police Department believes this portion of the bill raises constitutional issues and fails to give enough direction as to what factors must be weighed when the agency is considering releasing someone arrested for DUI.

Rep. Bronson indicates that throughout the state persons who have been required to attend a DUI treatment program as a result of being convicted of DUI or reckless driving continue to drive although they have failed to report to or complete that program. He believes fairness dictates that those persons should complete the program or lose their privilege to drive. This provision cancels the driving privilege of anyone who disregards the courts order and does not report to or complete the DUI program.

The DUI Programs Office, the Department of Highway Safety and Motor Vehicles and the Conference of County Court Judges support this driving privilege cancellation provision. The DUI Programs Office indicates that currently the driving privilege of a person who fails to complete the court ordered DUI program may be canceled. However, that cancellation method involves a convoluted procedure which requires the involvement of the clerk of the courts office. This provision strengthens and streamlines the cancellation process.

The Department of Highway Safety and Motor Vehicles supports the administrative suspension revisions. According to Rep. Wise, concerns have been raised that when law enforcement officers arrest someone for driving under the influence, the length of the testing and booking process after the arrest prevents the officers from returning to their duties on the streets. This bill grants correctional officers the authority to suspend driving privileges under these circumstances, thereby facilitating the law enforcement officers' ability to return to their duties on the streets.

The hearing officers in some areas of the state have been unable to conduct reviews in each of the administrative suspensions for unlawful blood alcohol levels or refusals. Statewide from October 1, 1990 to January 31, 1991 a total of 16,312 informal hearings were conducted by 12 hearing officers. The department had to invalidate 448 suspensions because they could not be processed in a timely manner. Only a small percentage of these hearings were requested by

the affected persons. The workload of the clerks will also be decreased by the modification which requires them *to* send notices to either the person's address of record or to the address given on the officers report, if different from the address of record. Currently the clerks are required to send notices to both addresses.

According to the Department of Highway Safety and Motor Vehicles, the removal of the 30-day waiting period after a suspension has been sustained strengthens constitutionality of the statute.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIMINAL JUSTICE:

Prepared by:	Staff Director:
Richard D. Davison	Susan G. Bisbee

FINAL ANALYSIS PREPARED BY COMMITTEE ON CRIMINAL JUSTICE:

Prepared by:	Staff Director:
Richard D. Davison	Susan G. Bisbee

EXHIBIT C

beverages *or* controlled substances has caused the death or serious bodily injury of any human baing, including the operator of the vessel, such person shall submit, upon the request of a law enforcement officer, to a test of his blood for the purpose of determining the alcoholic content thereof or tbm presence of controlled substances theroin. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner.

(b) The term "serious bodily injury" means a physical condition which creates a substantial risk of death; serious, personal disfigurement; or protracted loss or impairment *of* the function of any bodily member or organ.

(2) The provision of s. 316.1933(2), relating to blood tests for impairment or intoxication, are incorporated into this act.

(3)(a) Any criminal charge resulting from the incident giving rise to the officer's demand for testing should be tried concurrently with a charge of any violation arising out of the court. If such charges are tried separately, the fact that such person refused, resisted, obstructed, or opposed testing shall be admissible at the trial of the criminal offense which gave rise to the demand for testing.

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

(4) Notwithstanding any provision of law pertaining to the confidentiality *of* hospital record. or other medical

records, information obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 or s. 327.351 upon request for such information.

Section 12. Subsection (8) of section 90.803, Florida Statutes, 1990 Supplement, is amended to read:

90.603 Hearsay exceptions; availability of declarant immaterial.--The provision of s. 90.602 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(8) PUBLIC RECORDS AND REPORTS.--Records, reports, statements reduced to writing, or data compilations, in any form, of public offices or agencies, setting forth the activities *of* the office or agency, or matters observed pursuant to duty imposed by law as to matters which there was a duty to report, excluding in criminal cases matters observed by a police officer or other law enforcement personnel, unless the sources *of* information or other circumstances show their lack of trustworthiness. The criminal case exclusion shall not apply to an affidavit otherwise admissible under s. 316.1934(5).

Section 13. Subsection (3) is added to section 316.062, Florida Statutes, 1990 Supplement, to read:

316.062 Duty to give information and render aid.--

(3) The statutory duty of a person to make a report or give information to a law enforcement officer making a written report relating to an accident shall not be construed as extending to information which would violate the privilege of such person against self-incrimination.

Section 14. Subsection (4) of section 316.066, Florida Statutes, 1990 Supplement, is amended to read:

316.066 Written reports of accidents.--

(4) Except as specified in this subsection, each accident report made by a person involved in an accident and any statement made by such person to a law enforcement officer for the purpose of completing an accident report required by this section shall be without prejudice to the individual so reporting. No such report or statement shall be used as evidence in any trial, civil or criminal. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the accident if that person's privilege against self-incrimination is not violated. The results of breath, urine, and blood tests administered as provided in s. 316.1932 or s. 316.1933 are not confidential and shall be admissible into evidence in accordance with the provisions of s. 316.1934(2). Accident reports made by persons involved in accidents shall not be used for commercial solicitation purposes; provided, however, that use of an accident report for purposes of publication in a newspaper or other news periodical or a radio or television broadcast shall not be construed as "commercial purpose."

Section 15. Paragraph (b) of subsection (1) of section 322.051, Florida Statutes, 1990 Supplement, is amended to read:

324.051 Reports of accidents; suspensions of licenses and registrations.--

(1)

(b) The department is hereby further authorized to require reports of accidents from individual owners or

operators whenever it deems it necessary for the proper administration of thir chapter, and these reports ahall be made without prejudice except as specified in this subsection. No such report shall be used as evidence in any trial arising out of an accident. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the accident if that person's privilege against self-incrimination is not violated.

Section 16. Paragraph (d) of subsection (2) of section 116.1937, Florida Statutes, 1990 Supplement, is amended to read:

316.1937 Ignition interlock devices, requiring; unlawful acts.--

(2) If the court imposes the use of an ignition interlock device as a condition of probation, the court ahall:

(d) Determine the probationer's ability to pay for installation of the device if the probationer claims inability to pay. If the court determines that the probationer is unable to pay for installation of the device, the court may order that any portion of a fine paid by the probationer for a violation of s. 311.193 shall be allocated to defray the costs of installing the device.

Section 17. Subsection (4) of section 316.192, Florida Statutes, is amended to read:

316.192 Reckless driving.--

(4) In addition to any other penalty provided under this section, if the court has reasonable cause to believe that the use of alcohol, chemical substances set forth in s. 877.111, or substances controlled under chapter 893 contributed to a violation of this section, the court shall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of **the foregoing ""Appendix** to Petitioner's Brief on **the Merits " has been forwarded** by **United States** Mail **to: MICHAEL SALNICK, Esquire, 250 Australian Avenue South, #1303, West Palm** Beach, **FL 33401 this 4th** day of October, 1991.

Joan Fowler
Of Counsel

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