IN THE SUPREME COURT OF THE STATE OF FLORIDA

DAVID JOSEPH MEHL,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO.: 80,492

District Court of Appeal
5th District - No. 91-186

PETITIONER'S INITIAL BRIEF ON MERITS

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STATEMENT OF THE FACTS AND CASE

The Defendant was involved in a motor vehicle accident. As a result of serious injuries sustained in the accident, the Defendant was taken to Orlando Regional Medical Center for treatment. There, at the request of law enforcement, the treating trauma physician took a sample of the Defendant's blood for testing purposes. The sample of blood was sent to the Florida Department of Law Enforcement for testing. The analyst, Dr. Wayne Duer, reported a blood alcohol level of 0.10%. The Defendant was subsequently charged with the third degree felony of Driving Under the Influence causing serious bodily injury, a violation of s. 316.193(3)(c)2., Fla. Stat.

The Defendant then filed several motions to exclude the results of the blood test, including the motion which is the subject of this appeal. That motion was based on the failure of the Department of Health and Rehabilitative Services (HRS) to comply with the requirements set forth in s. 316.1932(1)(f)1., Fla. Stat. As pertinent, s. 316.1932(1)(f)1. requires that:

> The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules and regulations which shall have been adopted by [HRS]. Such rules and regulations shall be adopted after public hearing, shall specify precisely the test or tests which are approved by [HRS] for reliability of result and facility of administration, *and shall provide an approved method of administration which shall be followed in all such tests* given under this section. (emphasis supplied)

Specifically, the Defendant's motion argued that HRS had failed to

adopt rules and regulations which provided an approved method of administration to be followed in blood tests given pursuant to the implied consent statute.

At the hearing on the motion, the State did not dispute the fact that HRS rules and regulations failed to prescribe the required method of administration. (Tr. 50) The State also did not dispute that the requirements of s. 316.1932(1)(f) governed the administration of the Defendant's blood test. Instead, the State argued that, even if HRS failed to comply with the requirements of s. 316.1932, this failure did not result in a violation of the Defendant's constitutional rights of due process and equal protection.[1]

At the hearing on the motion, Dr. Wayne Duer testified that, as part of the licensing procedure, HRS rules and regulations required him as the permittee to submit the specific method which he performed to the Division of Implied Consent. (Tr. 25) Dr. Duer further testified that HRS licensed two general types of blood tests, enzymatic and gas chromatographic, (Tr. 26) but that the permittee, and not HRS, prescribed the method to be used in performing each test. (Tr. 25-26) Dr. Duer acknowledged that HRS did not prescribe the steps to be followed in performing the tests but that Dr. Duer instead relied on his previous toxicology

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[1]The Defendant's motion alleged that such a violation did occur as an additional basis for exclusion of the test results. This appeal, however, is predicated on the alleged statutory violation and does not depend on any previously alleged constitutional violations. See ***State v. Bender***, 382 So.2d 697 (Fla. 1980); ***State v. Reisner***, 584 So.2d 141 (Fla. 5th DCA), ***rev. denied***, 591 So.2d 184 (Fla. 1991).

training to perform the procedure. (Tr. 44) Dr. Duer further acknowledged that HRS had no rules or regulations pertaining to the maintenance, calibration, testing, and repairs of gas chromatographs. (Tr. 47) In fact, HRS did not provide a method for checking the accuracy of the testing apparatus. The only check on accuracy was through the licensing procedures whereby permittees were required to test and submit blood samples to HRS. (Tr. 49)

The trial court granted the Defendant's motion to suppress on the basis that s. 316.1932(1)(f) required HRS to prescribe the method of administration of blood tests and that HRS had failed to prescribe such method. (Tr. 55)

On appeal the State, apparently for the first time, argued that the State should have been allowed to offer the blood test results using standard evidentiary rules. Additionally, the State raised the new argument that s. 316.1933 was the applicable statute and not s. 316.1932.

Section 316.1933(1) provides that, notwithstanding any recognized ability of the Defendant to refuse to submit to testing under s. 316.1932, when a law enforcement officer has probable cause to believe that the Defendant, while under the influence, operated a motor vehicle which caused death or serious bodily injury, the officer may use reasonable force to require the Defendant to submit to the administration of a blood test.[2] In

[2]The State argued that these requirements were established at the hearing; however, at the hearing on this motion, no evidence concerning probable cause was presented. Apparently, the State was referring to the Defendant's earlier unsuccessful motion to suppress based on the lack of probable cause.

addition to restricting those who may withdraw blood, s. 316.1933 provides that:

> A chemical analysis of the person's blood to determine the alcoholic content thereof must have been performed substantially in accordance with methods approved by [HRS] and by an individual possessing a valid permit issued by [HRS] for this purpose. [HRS] *may approve* satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits which will be subject to termination or revocation at the discretion of [HRS]. (emphasis supplied)

S. 316.1933(2)(b), Fla. Stat. Thus, s. 316.1933, when read alone, does not require HRS to adopt rules approving the method, but merely provides that HRS may approve such methods.

The Fifth District Court of Appeal reversed the trial court's order. ***State v. Mehl***, 17 FLW D1952 (Fla. 5th DCA Aug. 21, 1992). Citing ***State v. Burke***, 599 So.2d 1339 (Fla. 1st DCA 1992), ***rev. denied***, No. 80,169 (Fla. Nov. 12, 1992), the court held that HRS had substantially complied with s. 316.1932(1)(f) by adopting rules for blood alcohol testing as contained in rules 10D-42.028-.030 of the Florida Administrative Code. ***Mehl***, 17 FLW at D1953.

Alternatively, the court held that the requirements of s. 316.1933 applied to the Defendant's case and not those of s. 316.1932. The court noted that the language of s. 316.1933(2)(b) did not parallel the language of s. 316.1932(1)(f)1. and concluded that:

> "Perhaps the legislature perceived a substantive distinction between the procedure that should be followed in developing the rules for testing blood where the power to undertake this physical invasion was "implied"

> by statute as a condition of obtaining a driver's license and the procedure deemed appropriate where law enforcement has probable cause to believe the driver had caused death or serious injury through driving under the influence of alcohol."

Mehl, 17 FLW at D1953.

Finally, citing ***Robertson v. State***, 17 FLW S454 (Fla. July 16, 1992), the court held that the "trial court erred in not affording the state an opportunity to attempt to introduce the defendant's blood test results using traditional evidentiary techniques." ***Mehl***, 17 FLW at D1953.

The court then certified the following questions to the Florida Supreme Court:

> CAN THE STATE INTRODUCE INTO EVIDENCE PURSUANT TO SECTION 316.1934 BLOOD SAMPLE TESTS RESULTS EVEN THOUGH HRS HAS NOT ADOPTED RULES GOVERNING TESTING AND MAINTENANCE OF EQUIPMENT APPROVED FOR USE IN THE TESTING OF BLOOD SAMPLES?
>
> CAN THE STATE INTRODUCE INTO EVIDENCE PURSUANT TO SECTION 316.1934 BLOOD SAMPLE TEST RESULTS CONDUCTED IN ACCORDANCE WITH THE HRS RULES PROMULGATED AS 10D-42.028, *ET SEQ.*?

Mehl, 17 FLW at D1954.

SUMMARY OF ARGUMENT

The judgment of the Fifth District Court of Appeal should be reversed, and the order of the trial court upheld, because:

1) The district court erred in holding that HRS had substantially complied with the requirements of s. 316.1932(1)(f) by adopting the rules for blood testing contained in rules 10D-42.028-0.030 of the Florida Administrative Code.

2) The district court erred in holding that the requirements of s. 316.1933 applied to the Defendant's case instead of s. 316.1932 and that under s. 316.1933 HRS was not required to promulgate rules providing an approved method of administration for blood tests performed pursuant thereto.

ARGUMENT

Initially, the Defendant takes issue with the district court's conclusion that HRS has substantially complied with s. 316.1932(1)(f) by adopting rules for blood alcohol testing as contained in rules 10D-42.028-.030 of the Florida Administrative Code.

In ***State v. Burke***, 599 So.2d 1339 (Fla. 1st DCA 1992), ***rev. denied***, No. 80,169 (Fla. Nov. 12, 1992), the court indicated that, under s. 316.1932(1)(f), the admissibility of blood alcohol test results should be decided based on "whether substantial compliance with the rules and regulations has taken place." 599 So.2d 15 1342. Relying on ***Burke***, the district court in this case held that HRS had substantially complied with s. 316.1932(1)(f).

This Court rejected a similar analysis in the recent decision of ***Robertson v. State***, 17 FLW S454 (Fla. July 16, 1992). In ***Robertson***, the defendant objected to the admission of the results of blood alcohol tests on the basis that the State had failed to comply with the requirements of the implied consent statute in that the person who performed the tests was not certified by HRS. The district court held that, despite this deviation, the State had substantially complied with the statute.

The Supreme Court rejected this conclusion, noting that the plain terms of the statute required the person conducting the test to have an HRS permit. The Court further noted that the "substantial compliance" clauses contained in s. 316.1933(2)(b) and s. 316.1934(3) by their own terms applied only to the "methods

approved by [HRS]" and the "approved techniques and actual testing procedures." 17 FLW at S455. The "substantial compliance" clause did not refer to the statutes' requirement that the individual conducting the test possess a valid permit.

As pertinent, s. 316.1932(1)(f)1. requires that:

> The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules and regulations which shall have been adopted by [HRS]. Such rules and regulations shall be adopted after public hearing, shall specify precisely the test or tests which are approved by [HRS] for reliability of result and facility of administration, and shall provide an approved method of administration which shall be followed in all such tests given under this section.

Section 316.1933(2)(b) provides that:

> A chemical analysis of the person's blood to determine the alcoholic content thereof must have been performed substantially in accordance with methods approved by [HRS] and by an individual possessing a valid permit issued by [HRS] for this purpose. [HRS] may approve satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits which will be subject to termination or revocation at the discretion of [HRS].

As the Supreme Court has pointed out, s. 316.1934(3) further cautions that:

> A chemical analysis of a person's blood to determine alcoholic content . . . , in order to be considered valid under the provisions of this section, must have been performed substantially in accordance with methods approved by [HRS] and by an individual possessing a valid permit issued by [HRS] for this purpose. Any insubstantial differences

> between approved techniques and actual testing procedures in any individual case shall not render the test or test results invalid.

Clearly, the substantial compliance clauses of s. 316.1932(1)(f)1., s. 316.1933(2)(b), and s. 316.1934(3) refer only to the requirement that the blood test be performed substantially in accordance with methods approved by HRS. See ***Robertson***, 17 FLW at S455. The substantial compliance clause does not refer to the requirement of s. 316.1932(1)(f)1. that HRS adopt rules and regulations after public hearing providing an approved method of administration to be followed in all tests given under that section.

Where no statutory ambiguity exists, the language of the statute may not be varied beyond its plain meaning. ***Id***. In fact, the usual rule is that "[c]riminal statutes are to be construed strictly and in favor of the accused." ***State v. Jackson***, 526 So.2d 58, 59 (Fla. 1988) (citing s. 775.021(1)). See also ***Albritton v. State***, 561 So.2d 19, 20 (Fla. 5th DCA 1990). Under these authorities, therefore, HRS must actually comply with the requirements of s. 316.1932(1)(f)1. by promulgating rules and regulations approving the method of administration to be followed in blood tests given pursuant to the implied consent statute. "Substantial compliance" is not the standard.

The question then becomes whether HRS has complied with the requirement that it adopt a rule approving a method (or methods) of administration. In ***State v. Reisner***, 584 So.2d 141 (Fla. 5th DCA), ***rev. denied***, 591 So.2d 184 (Fla. 1991), the court held that s.

316.1932(1)(f)1. required HRS to formally promulgate rules approving and specifying the specific technology and methods to be used in performing chemical tests pursuant to Florida's implied consent law. 584 So.2d at 145. The Defendant would submit that HRS has utterly failed to comply with this requirement. As the district court correctly pointed out, HRS has promulgated rules 10D-42.028-.030 relative to the testing of blood for alcohol content under the implied consent statute. Rule 10D-42.029 relates to the labelling, collecting, and storage of blood samples, while Rule 10D-42.030 contains the application procedures for blood alcohol testing permits.

Rule 10D-42.028 authorizes two procedures for the testing of blood: alcohol dehydrogenase and gas chromatography. While this rule meets the requirement of s. 316.1932(1)(f)1. that HRS "specify precisely the test or tests which are approved by [HRS]," the rule fails to meet the additional requirement of approving a method to be followed in administering the approved tests.

Rule 10D-42.0211 of the Florida Administrative Code defines methods as "a set of instructions detailing the proper operation of an instrument or the procedure used to analyze for a specific compound." While Rule 10D-42.028 may specify the approved procedures, the rules contains no set of instructions detailing the procedures used to analyze for alcohol or detailing the proper operation of any instruments used in performing such procedures.

Rule 10D-42.030, relating to permitting procedures, requires the permit applicant to provide HRS with a description of the

procedure used by the applicant in determining the alcohol content of blood samples. Apparently, the State and the district court believed that, by adopting this rule, HRS had complied with the statute's directive to adopt a rule approving the method of administering the test. Instead of providing an approved method of administration, however, the rule effectively allows each applicant to choose his own method. At the hearing, Dr. Duer acknowledged that his chosen method was the result of his previous toxicology training (Tr. 44), and not the result of any rules or regulations promulgated by HRS.

A similar situation existed in ***State v. Peters***, 729 S.W.2d 243 (Mo. App. 1987). In ***Peters***, the implied consent statute directed the state health department to adopt rules approving "satisfactory techniques, devices, equipment, or methods to conduct tests" under the statute. ***Id***. at 245 (quoting Mo. Rev. Stat. s. 577.026(2)). Instead, the department's regulations, as part of the permit procedure, required the applicant to supply his own analytical method for the department's approval. Rejecting the state's argument that the regulations effectively approved the method, the court noted that

> [t]his tortured argument would result in a situation in which the department of health has delegated its responsibility to the...permittee. This conclusion is contrary to the clear and redundant statutory language which requires a specific approval of methods by the department of health.

Id.

Section 316.1932(1)(f)1. is unambiguous; it directs HRS to

adopt rules and regulations providing an approved method of administering blood tests under the statute. In holding that HRS's current practice of allowing each applicant to submit his own method for approval somehow complies with this statutory directive, the district court has varied the statutory language well beyond its plain meaning.

Alternatively, the district court held that s. 316.1933, and not s. 316.1932, applied to the present case and that the terms of s. 316.1933 required a different procedure. ***Mehl***, 17 FLW at D1953. Noting that s. 316.1933(2) (and s. 316.1934(3)) required "that a chemical analysis of a person's blood be performed substantially in accordance with methods *approved* [not 'adopted'] by HRS," the court found that:

> This [was] exactly the procedure that was followed in these cases. HRS had approved the specific method proposed by [Dr. Duer] in his application and had issued a permit to him to conduct blood analysis using that specific method.

Id.

Apparently, the court concluded that s. 316.1933 applied because the Defendant's initial motion to suppress challenged the law enforcement officer's probable cause to believe that serious bodily injury had resulted from the accident. 17 FLW at D1954 n.2. Assuming the court is correct in this conclusion, the Defendant strongly disagrees with the court's additional conclusion that s. 316.1933 somehow mandates a different procedure for determining the admissibility of blood test results from the procedure required under s. 316.1932.

As Judge Diamantis stated in a separate concurrence, "[t]here is no rational basis to draw a distinction between blood tests in a section 316.1932 DUI case and a section 316.1933 case of driving a motor vehicle while under the influence causing death or serious bodily injury" ***Mehl***, 17 FLW D1954 (Diamantis, J., concurring in result only). Judge Diamantis correctly refused to "subscribe to any suggestion that the legislature intended different requirements regarding the administration of blood tests under section 316.1932(1)(f) and sections 316.1933(2)(b) and 316.1934(3) . . . , depending on whether the method of blood testing is required to be 'adopted' or 'approved.'" ***Id***. In fact, the legislative history surrounding the enactment of s. 316.1933 is devoid of any such intent.

The legislative history indicates that the legislature enacted s. 316.1933 in response to ***State v. Rafferty***, 405 So.2d 1004 (Fla. 4th DCA 1981). As the Senate Staff Comments reveal, the ***Rafferty*** court, relying on ***Schmerber v. California***, 384 U.S. 757 (1966), "apparently authorized[d] the use of reasonable force to extract a blood sample for the purpose of drug testing if the arresting officer ha[d] probable cause to believe that the driver ha[d] been operating a motor vehicle while under the influence of controlled substances." Senate Staff Analysis and Economic Impact Statement, at 4 (Feb. 1, 1982) (comments) (attached). The legislature, thus, enacted s. 316.1933 to correspond to the ***Rafferty*** decision by authorizing the use of reasonable force to require a person to submit to administration of a blood test, notwithstanding any

previously recognized ability to refuse such a test under s. 316.1932.

The obvious conclusion to be drawn is the legislature's belief that, under certain circumstances, the use of reasonable force was justified to require a defendant to submit to blood testing. The triggering circumstance is the law enforcement officer's probable cause to believe that a motor vehicle in the control of a person driving under the influence has caused death or serious bodily injury. The legislature has in no way indicated, however, that this circumstance also justifies a more lenient standard of admissibility for the results of the blood test.

Until recently, the courts likewise have not drawn such a distinction. These courts have applied the standards of s. 316.1932 without discussing whether the blood was drawn pursuant to the request of a law enforcement officer based on probable cause. See, e.g., ***Albritton v. State***, 561 So.2d 19 (Fla. 5th DCA 1990) (reversing conviction for DUI manslaughter where trial court permitted evidence of blood test results in contravention of s. 316.1932(1)(f)2.); ***State v. Roose***, 450 So.2d 861 (Fla. 3d DCA), ***rev. denied***, 451 So.2d 850 (Fla. 1984) (affirming order of suppression where blood sample was drawn by hospital intern not qualified under s. 316.1932(1)(f)2.); ***Richwagon v. State***, 466 So.2d 10 (Fla. 4th DCA 1985) (affirming conviction even though nurse who drew blood at hospital was not yet registered nurse as required by s. 316.1932(1)(f)2.).

As Judge Diamantis suggested, s. 316.1933 does not exist

separate and apart from the implied consent provisions of s. 316.1932. This Court has recognized that the "implied consent law consists of sections 316.1932, 316.1933, and 316.1934." ***Robertson***, 17 FLW at S457 n.4 (citing ***State v. Strong***, 504 So.2d 758, 759 (Fla. 1987)).

In ***State v. Strong***, supra, this Court stated that the provisions of s. 316.1932(1)(f)2. were "for the protection of drivers whom the government *requires* to give blood samples under the implied consent law." 504 So.2d at 759 (emphasis in original). The Defendant in the present case clearly was required to give a blood sample under the implied consent law, whether such sample was taken pursuant to s. 316.1932 or s. 316.1933.

In ***Robertson***, supra, the Court recognized that the primary policies of the implied consent statute included (1) ensuring the use of reliable scientific evidence "by establishing uniform, approved procedures for testing" and (2) protecting the health of test subjects who by statute have given their implied consent to such tests. 17 FLW at S456. Surely, these interests exist whether the defendant impliedly consents or is forced to submit to administration of a blood test.

When the State can demonstrate that it has complied with the requirements of the implied consent statute in conducting blood tests pursuant thereto, a presumption arises that the results of such blood tests are admissible at trial. ***Robertson*** 17 FLW at S456. As the Supreme Court pointed out in ***Robertson***, the State's failure to comply with the statute does not necessarily render

evidence of blood-alcohol test results inadmissible. ***Id***. The State may still attempt to introduce the results using the three-prong predicate described by the Court in ***State v. Bender***, 382 So.2d 697 (Fla. 1980).[3] Under this circumstance, however, the State is not entitled to the benefits of the presumption afforded by the implied consent statute, and the State carries the burden of establishing the ***Bender*** requirements. ***Robertson***, 17 FLW at S456.

In the case at bar, HRS has altogether failed to adopt rules approving methods to be followed in administering blood tests under the implied consent statute. The State, therefore, should not be afforded the presumption of admissibility which s. 316.1934(3) provides, but should be required to establish the traditional predicates under ***Bender***, supra n.3.

Although the district court held that the State in this case should have been permitted to introduce the blood test results by establishing these traditional predicates, counsel for the Defendant have been unable to find where the State argued such a position at the hearing. (Tr 50-59) It appears, rather, that the State objected to the trial court's decision based on that court's refusal to find statutory compliance because of HRS's failure to adopt the required rules. It was only on appeal that the State argued it should have been allowed to offer the test results using standard evidentiary rules.

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[3]The proper predicate must establish that "(1) the test was reliable, (2) the test was performed by a qualified operator with the proper equipment and (3) expert testimony was presented concerning the meaning of the test." ***Bender***, 382 So.2d at 699.

In ***Reisner***, supra, the district court indicated that the statutory presumption of admissibility was not available where the State attempted to apply a rule which had been formally promulgated but which was vague and ambiguous, or where the State attempted to apply a rule which had not been formally promulgated. 584 So.2d at 144-45. Similarly, the Defendant would maintain that the statutory presumption does not apply where HRS altogether fails to promulgate a rule as specifically mandated by the statute.

CONCLUSION

Based on the foregoing, the defendant respectfully requests this court to reverse the decision of the Fifth District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to: Barbara Fink, Assistant Attorney General, 210 North Palmetto Avenue, Suite 447, Daytona Beach, Florida on this 20th day of November, 1992.

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By: _____
MICHAEL H. LAMBERT
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DATE: October 6, 1981

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	R.W.Evans	P.Liepshutz	1. J.-Crim.	
2.			2.	
3.			3.	

SUBJECT: Driving Under the Influence

BILL NO. AND SPONSOR: SB 69 by Senator Jenne

I. SUMMARY:

A. Present Situation:

Section 316.193(1) prohibits driving under the influence of alcohol and controlled substances to the extent normal faculties are impaired. Section 316.193(3) prohibits the operation of a motor vehicle by any person with a blood alcohol level of .10 percent or above. Section 316.193(5), Florida Statutes, provides that any person convicted of driving under the influence may be required by the trial judge to attend an alcohol education course for alcoholism evaluation and treatment. Section 322.261(1) provides that a person operating a motor vehicle in this state consents to a breath test for the purpose of determining the alcoholic content of his blood. The breath test must be incidental to a lawful arrest and administered at the request of a peace officer having reasonable cause to believe such person was driving under the influence of alcohol.

According to s. 322.261(1)(c), a driver admitted to a hospital who is unconscious or so incapacitated that it would be impractical or impossible to administer a breath test is deemed to have consented to a blood test (blood alcohol test) for the purpose of determining the alcoholic content of his blood. The blood test may be administered whether or not the driver is told that failure to submit to the test will result in suspension of his driving privilege.

Refusal to submit to the test results in the suspension of the driving privilege for three months; Florida appellate courts are divided on the issue whether such refusal is admissible into evidence. Section 322.261(1)(d)-(g) provides procedures for the suspension of the driving privilege in the event a driver refuses to submit to a breath test.

Any person whose license is suspended for refusal to submit to the breath test may petition for a hearing before the trial court pursuant to s. 322.261(1)(d)-(g) on the issue of whether or not the refusal was lawful. The filing of the petition for the hearing stays the suspension until a hearing resolves the issue.

Sections 322.271(1)(a) and 322.28(2) provide that a temporary driver's permit may be issued by the Department of Highway Safety and Motor Vehicles to a person whose license is suspended or revoked. The permit is valid for 45 days unless cancelled. An administrative hearing is held by the Department to determine the eligibility of the driver for a temporary permit. Section 322.28 further provides that a driver convicted of driving with an unlawful blood alcohol or driving while under the influence of alcoholic beverages may be required to attend a driver improvement course for the rehabilitation of drinking drivers.

Courts have construed s. 322.261(1)(b) and s. 322.262(3) as requiring strict compliance of breath and blood analyses with methods approved by the Department of Health and Rehabilitative Services (H.R.S.) for the results to be admissible. See State v. Wills, 359 So.2d 566 (Fla. 2d DCA 1978).

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: R.W.Evans
Staff Director: P.Liepshutz
Subject: DUI

Bill No. And Sponsor:
SB 69 by Senator Jenne

The Florida Supreme Court, in construing s. 322.261, held that the results of a blood test are inadmissible when the driver refuses to submit to a breath test, and the blood test was administered despite his refusal to consent. The Court noted that the legislature has given the driver an optior. to refuse to submit; thus, the state is prohibited from forcefully taking such evidence when the driver exercises his option to refuse.

According to s. 322.261(2), blood withdrawals must be performed by a physician, registered nurse, or clinical lab technician or technologist. Such personnel are immune from civil or criminal liability if the blood withdrawal is proper and requested in writing. Florida courts, in construing s. 316.066(4) have repeatedly held that the results of a breath or blood alcohol test administered by a law enforcement officer as a basis for completing an accident report are inadmissible into evidence, notwithstanding full compliance with the provisions of s. 322.261

Section 860.01 prohibits driving while intoxicated. The statute provides penalties for any person who damages person or property or who kills another person (vehicular manslaughter) while operating a motor vehicle under the influence of alcohol.

B. Effect of Proposed Changes:

The bill amends s. 316.193 to lower the unlawful blood alcohol level to .08. The bill also expands the scope of the alcohol education, evaluation, and treatment provided for in s. 316.193(5), Florida Statutes, to substance abuse education, evaluation, and treatment. The bill amends s. 322.261 to provide that a driver consents to a urine test for the purpose of detecting controlled substances, in addition to the breath test provided therein. The urine test must be incidental to a lawful arrest and administered at the request of a law enforcement officer having reasonable cause to believe the person was driving or had actual physical control of a motor vehicle while under the influence of controlled substances. The urine test shall be administered in a reasonable manner with regard to the individual's privacy and accuracy of the specimen. Refusal to submit to a breath or urine test or both results in suspension of the driving privilege for three months; if the driving privilege has been previously suspended for refusing to submit, the driving privilege shall be suspended for six months.

The bill further provides that a driver who is admitted to a hospital consents to a blood test for the purpose of determining the alcoholic content of the blood or the presence of controlled substances if administration of the breath or urine test is impractical or impossible. The blood test shall be performed in a reasonable manner. Any person capable of refusal shall be told that failure to submit to such blood test results in suspension of his driving privilege. If blood is withdrawn from an unconscious or incapacitated person, he shall be advised of the withdrawal, that he may withdraw his consent, and that such withdrawal shall result in suspension of his driving privilege.

The procedures set forth in s. 322.261(1)(d)-(g) for suspension of the driving privilege upon a driver's refusal to submit to a breath test are extended to apply to a driver's refusal to submit to a urine test. The clerk of the court shall schedule the lawful refusal hearing and shall notify the driver and state attorney of the hearing. If the driver fails to appear at the hearing, his driving privilege will be suspended. Section 322.261(1)(h) is amended to permit an arrested driver to request a urine or blood drug test if none is administered.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: R.W.Evans
Staff Director: P.Liepshutz
Subject: DUI

Bill No. And Sponsor:
SB 69 by Senator Jenne

Sections 322.261(1)(b) and 322.262(3) are amended to read that analyses of breath and blood alcohol tests must have been performed substantially in accordance with H.R.S. methods for the results of such tests to be admissible into evidence.

Section 322.261(2) is amended to provide blood withdrawals by a certified paramedic; blood withdrawals are no longer restricted to a medical facility. The bill amends s. 322.261(2)(e) to afford immunity from liability to a paramedic. A written request for a blood withdrawal is deleted by this bill as a condition of immunity from liability.

The bill creates s. 322.2615, Florida Statutes, to provide that if a law enforcement officer has probable cause to believe that a motor vehicle driven by a person while under the influence of alcohol or controlled substances kills or seriously injures another person, the officer may require the driver to submit to a blood test. The test may be administered as a drug or alcohol test. The blood test shall be performed in a reasonable manner.

Section 322.262(4), as amended, authorizes a jury trial for any person charged with driving under the influence of controlled substances. The bill also amends s. 322.28, Florida Statutes, to suspend and revoke a driver's license or privilege upon conviction of driving under the influence of controlled substances. The driver improvement course shall be for the education of drivers who abuse alcohol or controlled substances.

Section 322.271 is amended to exclude a driver who refuses to submit to the chemical test or tests provided in s. 322.261, from modification of revocation or suspension of the driver's license. In other words, a driver whose license is suspended for refusal to submit will no longer be eligible for a temporary driver's permit.

Section 316.066(4) is amended to specifically exclude the results of breath, urine, and blood tests from the confidential privilege of this section. Such results could, therefore, be admissible into evidence even if the tests were administered as a basis for completing an accident report.

Section 860.01, prohibiting driving while intoxicated, is amended to provide that a person who damages person or property or who kills another person while operating a motor vehicle under the influence of model glue or any controlled substance shall be punished by the penalties set forth in the statute. The bill further provides that alcohol and drug test results shall be admissible in a DWI prosecution.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public: None.

B. Government: The drug test proposed in this bill may increase the prosecutions for driving under the influence of controlled substances. Accordingly, increased prosecutions and the likelihood of increased convictions may result in higher costs to affected state and county agencies. Law enforcement agencies may incur expenses related to drug test administration and analyses and state attorneys may be prosecuting more cases. The Department of Law Enforcement has projected that additional personnel and equipment needed to accomodate the increased workload may cost the state almost $300,000. The Department of Highway Safety and Motor Vehicles may face higher costs to contend with increased suspensions and revocations. In addition, the state may incur increased costs relating to substance abuse education, evaluation, and treatment. As temporary permit hearings decline, however, hearing costs incurred by the Department of Highway Safety and Motor Vehicles should decrease.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: R.W.Evans
Staff Director: P.Liepshutz
Subject: DUI

Bill No. And Sponsor:
SB 69 by Senator Jenne

III. COMMENTS:

Section 322.2615 was created to authorize a law enforcement officer to use reasonable force to require a driver to submit to a blood test in limited circumstances. This section follows the guidelines of the United States Supreme Court set forth in Schmerber v. California, 384 U.S. 757 (1966) in providing for the blood test. In Schmerber, the Court held that a compulsory blood test directed by a law enforcement officer without a warrant did not violate a defendant's right under the Fourth and Fourteenth Amendments to be protected from unreasonable searches and seizures. The Court reasoned that such a warrantless search was proper, because the officer had probable cause to believe the accused was driving while under the influence of intoxicating liquor. The Court further noted that such a blood test is a reasonable test in view of the minimal extraction of blood, the effectiveness and widespread use of such test, the virtual absence of risk, trauma, or pain for most persons, and the performance of the test in a reasonable manner.

In a recent decision by the Fourth District Court of Appeal, State v. Rafferty, 405 So.2d 1004 (Fla. 4th DCA 1981), the court recognized that testing for drugs is constitutional even without the driver's consent or the benefit of a search warrant. Citing the Schmerber decision, the court ruled that blood and urine test results were properly admissible into evidence because the arresting officer had probable cause to believe that the defendant was driving under the influence of controlled substances. As the Legislature had not prohibited the taking of blood for the purpose of drug testing, the testing for drugs was constitutional in light of the Schmerber case. Significantly, the decision of Rafferty apparently authorizes the use of reasonable force to extract a blood sample for the purpose of drug testing if the arresting officer has probable cause to believe that the driver has been operating a motor vehicle while under the influence of controlled substances.

SB 69 is very similar to HB 15 by Representative Larry Smith. SB 69, for all intents and purposes, is identical to CS/SB 148 (1981) which died in the Senate on the Special Order Calendar; its counterpart, HB 1117, passed the House but died in the Judiciary-Criminal Committee.

IV. AMENDMENTS:

None.

DATE: February 1, 1982

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Evans	Liepshutz	1. J.Crim.	Fav/CS
2. Fradley	Alberdi	2. J.Civ.	
3.		3.	

SUBJECT:

Driving Under Influence

BILL NO. AND SPONSOR:

CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Criminal Committee, and Senators Jenne, Skinner, Langley, Jenkins, Lewis, and Don Childers

I. SUMMARY: *SEE ANALYSIS FOR CS/CS/SBs 69 etc.*

A. Present Situation:

Under current statutory law, any person convicted for the first time of driving while under the influence of alcoholic beverages, model glue, or a controlled substance, when affected to the extent that his normal faculties are impaired, (DUI), will be punished by imprisonment for not more than 6 months or by a fine of not less than $25 or more than $500, or both.

Any person convicted for the first time of driving while having a blood alcohol level of 0.10 percent or above, (DUBAL), will be punished by imprisonment for not more than 90 days or by a fine of not more than $250, or both.

Any person convicted of driving while intoxicated, (DWI), and causing damage to property or person of another is guilty of a misdemeanor punishable by imprisonment up to 1 year and by a fine up to $1,000. If the death of any human being is caused by such intoxicated person he is guilty of manslaughter punishable by imprisonment up to 15 years and by a fine up to $10,000.

A court may require an offender convicted for DUI, DUBAL, or DWI to attend an alcohol education course. Section 322.291, however, requires a person whose license has been revoked upon conviction for any of these offenses to attend such a course before the driving privilege will be reinstated. Section 322.28 provides minimum license revocation periods upon conviction for DWI, DUI, and DUBAL. Although their license has been revoked, convicted offenders may petition the Department of Highway Safety and Motor Vehicles for a temporary driving permit for business or employment purposes.

Any person who drives in the State of Florida is deemed to have consented to submit to a breathalyzer test if he is lawfully arrested for any offense allegedly committed while he was driving a motor vehicle under the influence of alcoholic beverages. Any person who refuses to take the chemical test will have his license suspended for 3 months; a temporary driving permit may be available. Any person who is unconscious is deemed to have consented to a breath and a blood test.

Any person charged with driving a motor vehicle while under the influence of intoxicating beverages is entitled to a trial by jury. The results of any breath or blood test of such person is admissible into evidence.

A trial court may not accept a guilty plea to a lesser offense when the defendant has been charged with DUI or DUBAL and his blood or breath test reveals a blood alcohol level of 0.20 percent or more.

B. Effect of Proposed Changes:

This bill provides minimum mandatory fines and imprisonment for a person convicted of DUI, DUBAL, or DWI. The minimum penalties, which also include increased periods of revocation of a driver's license are as follows:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: Fradley
Staff Director: Alberdi
Subject: Driving Under Influence

Bill No. And Sponsor:
CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Criminal Committee, and Senators Jenne, Skinner, Langley, Jenkins, Lewis, and Don Childers

I. B. Effect of Proposed Changes: (continued)

Minimum Mandatory Penalties

	s. 316.193(1), (2) DUI	s. 316.193(3), (4) DUBAL	s. 860.01(2) DWI (Damage to Person or Property)	s. 860.01(2) DWI (Manslaughter)
1st Conviction	72 hrs. - 6 mo. $250 - $500 6 mo. revocation	48 hrs. - 90 days $250 - $500 6 mo. revocation	30 days - 1 yr. $300 - $1,000 *1 yr. revocation	90 days - 15 yrs. $1,000 - $10,000 *1 yr. revocation
2nd Conviction	*10 days - 6 mo. $500 - $1,000 12 mo. revocation	*10 days - 6 mo. $500 - $1,000 12 mo. revocation	30 days - 1 yr. $300 - $1,000 *1 yr. revocation	90 days - 15 yrs. $1,000 - $10,000 *1 yr. revocation
3rd Conviction	*30 days - 12 mo. $1,000 - $2,500 5 yr. revocation	*30 days - 12 mo. $500 - $2,500 5 yr. revocation	30 days - 1 yr. $300 - $1,000 *1 yr. revocation	90 days - 15 yrs. $1,000 - $10,000 *1 yr. revocation
1st Conviction w/BAL of .20	10 days - 6 mo. $500 - $1,000 6 mo. revocation	72 hrs. - 6 mo. $500 - $1,000 6 mo. revocation	Revocation for DWI is 1 yr. maximum.	
Conviction within 5 yrs. of DWI Manslaughter	30 days - 12 mo. $500 - $1,000 6 mo. - 5 yr. revo.	30 days - 12 mo. $500 - $1,000 6 mo. - 5 yr. revo.		

*Existing law.

The bill amends s. 316.193 to lower the unlawful blood alcohol level to .08. It expands the scope of the alcohol education, evaluation, and treatment provided for in s. 316.193(5) to substance abuse education, evaluation, and treatment. The bill amends s. 322.261 to provide that a driver consents to a urine test for the purpose of detecting controlled substances, in addition to the breath test. Refusal to submit to a breath or urine test or both results in suspension of the driving privilege for three months; if the driving privilege has been previously suspended for refusing to submit, the driving privilege shall be suspended for six months.

The bill provides that a driver who is admitted to a hospital consents to a blood test for the purpose of determining the alcoholic content of the blood or the presence of controlled substances if administration of the breath or urine test is impractical or impossible. The blood test shall be performed in a reasonable manner. Any person capable of refusal shall be told that failure to submit to such blood test results in suspension of his driving privilege. If blood is withdrawn from an unconscious or incapacitated person, he shall be advised of the withdrawal, that he may withdraw consent for the use of such tests, and that such withdrawal of consent shall result in suspension of his driving privilege.

The procedures set forth in s. 322.261(1)(d)-(g) for suspension of the driving privilege upon a driver's refusal to submit to a breath test are extended to apply to a driver's refusal to submit to a urine test. The clerk of the court shall schedule the lawful refusal hearing and shall notify the driver and state attorney of the hearing. If the driver fails to appear at the hearing, his driving privilege will be suspended. Section 322.261(1)(h) is amended to permit an arrested driver to request a urine or blood drug test if none is administered.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst:	Fradley	Bill No. And Sponsor:
Staff Director:	Alberdi	
Subject:	Driving Under Influence	CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Criminal Committee, and Senators Jenne, Skinner, Langley, Jenkins, Lewis, and Don Childers

I. B. Effect of Proposed Changes: (continued)

Sections 322.261(1)(b) and 322.262(3) are amended to read that analyses of breath and blood alcohol tests must have been performed substantially in accordance with HRS methods for the results of such tests to be admissible into evidence.

The bill deletes the requirement provided in s. 322.261(2)(e) of a written request for a blood withdrawal as a condition of immunity from liability for the attending physician, nurse, technician, or technologist.

The bill creates s. 322.2615 which provides that if a law enforcement officer has probable cause to believe that a motor vehicle driven by a person while under the influence of alcohol or controlled substances kills or seriously injures another person, the officer may require the driver to submit to a blood test.

Section 322.262(4) authorizes a jury trial for any person charged with driving under the influence of controlled substances. The bill also amends s. 322.28 to revoke a driver's license upon conviction of driving under the influence of controlled substances.

Section 332.271 provides that a driver whose license is suspended for refusal to submit to a test will no longer be eligible for a temporary driver's permit.

The bill amends 322.28(2)(e) to provide that no driving permit for business or employment shall be issued to a driver whose license has been revoked until 10 days after revocation.

Section 316.066(4) is amended to exclude the results of breath, urine, and blood tests from the confidential privilege of this section.

Section 322.281 provides that the court shall not accept a guilty plea to a lesser offense when the driver is charged with DUI or DUBAL and the test results show a blood alcohol level of .08 or more or the driver has refused to submit to a breath or blood test.

Section 860.01(2) is amended to provide that a person who damages person or property or kills another while under the influence of any controlled substance may be guilty of DWI. The bill further provides that alcohol and drug test results shall be admissible in a DWI prosecution.

The bill amends s. 316.193 to require that all offenders convicted of DUI, DUBAL or DWI shall attend a substance abuse education course. It requires drivers license applicants to be tested on the laws and dangers relating to operating a motor vehicle under the influence of alcohol or controlled substances.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public: None.

B. Government:

The imposition of minimum mandatory jail sentences may increase the operating costs for local jails and may require construction of improvements or new facilities. HSMV reports that in 1980 53,029 persons were arrested for DUI and 8,279 drivers were arrested for DUBAL; 36,657 DUI offenders and 2,029 DUBAL violators were convicted. Similar figures are projected for 1981.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst:	Fradley	Bill No. And Sponsor:
Staff Director:	Alberdi	
Subject:	Driving Under Influence	CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Criminal Committee, and Senators Jenne, Skinner, Langley, Jenkins, Lewis, and Don Childers

II. B. Government: (continued)

If more DUI and DUBAL cases are tried, the state may require additional prosecutors, investigators, and judges to handle the increased caseload. The state and local governments would also incur increased trial costs such as witness fees and jurors per diem costs.

Law enforcement agencies may incur expenses related to drug test administration and analyses. The Department of Law Enforcement has projected that additional personnel and equipment needed to accommodate the increased workload may cost the state almost $300,000. The Department of Highway Safety and Motor Vehicles may face higher costs to contend with increased suspensions and revocations.

The minimum fines provided by this bill should offset some of the expenses incurred by local governments from increased jail and trial costs.

III. COMMENTS:

In a recent decision by the Fourth District Court of Appeal, State v. Rafferty, 405 So. 2d 1004 (Fla. 4th DCA 1981), the court recognized that testing for drugs is constitutional even without the driver's consent or the benefit of a search warrant. Citing the United States Supreme Court in Schmerber v. California, the court ruled that blood and urine test results were properly admissible into evidence because the arresting officer had probable cause to believe that the defendant was driving under the influence of controlled substances. As the Legislature had not prohibited the taking of blood for the purpose of drug testing, the testing for drugs was constitutional in light of the Schmerber case. Significantly, the decision of Rafferty apparently authorizes the use of reasonable force to extract a blood sample for the purpose of drug testing if the arresting officer has probable cause to believe that the driver has been operating a motor vehicle while under the influence of controlled substances.

Similar bill, HB 946, has been referred to the House Committee on Appropriations.

IV. AMENDMENTS: None.

DATE: February 2, 1982

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Evans	Liepshutz	J.Crim.	Fav/CS
2.	Fradley DF	Alberdi	J.Civ.	Fav/CS/CS
3.				

SUBJECT:

Driving Under Influence

BILL NO. AND SPONSOR:

CS/CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Civil Committee, & Senators Jenne, Skinner, Langley, Jenkins, Lewis, Don Childers, Beard, Poole, Frank, Stuart, & Johnston

I. SUMMARY:

A. Present Situation:

Under current statutory law, any person convicted for the first time of driving while under the influence of alcoholic beverages, model glue, or a controlled substance, when affected to the extent that his normal faculties are impaired, (DUI), will be punished by imprisonment for not more than 6 months or by a fine of not less than $25 or more than $500, or both.

Any person convicted for the first time of driving while having a blood alcohol level of 0.10 percent or above, (DUBAL), will be punished by imprisonment for not more than 90 days or by a fine of not more than $250, or both.

Any person convicted of driving while intoxicated, (DWI), and causing damage to property or person of another is guilty of a misdemeanor punishable by imprisonment up to 1 year and by a fine up to $1,000. If the death of any human being is caused by such intoxicated person he is guilty of manslaughter punishable by imprisonment up to 15 years and by a fine up to $10,000.

A court may require an offender convicted for DUI, DUBAL, or DWI to attend an alcohol education course. Section 322.291, however, requires a person whose license has been revoked upon conviction for any of these offenses to attend such a course before the driving privilege will be reinstated. Section 322.28 provides minimum license revocation periods upon conviction for DWI, DUI, and DUBAL. Although their license has been revoked, convicted offenders may petition the Department of Highway Safety and Motor Vehicles for a temporary driving permit for business or employment purposes.

Any person who drives in the State of Florida is deemed to have consented to submit to a breathalyzer test if he is lawfully arrested for any offense allegedly committed while he was driving a motor vehicle under the influence of alcoholic beverages. Any person who refuses to take the chemical test will have his license suspended for 3 months; a temporary driving permit may be available. Any person who is unconscious is deemed to have consented to a breath and a blood test.

Any person charged with driving a motor vehicle while under the influence of intoxicating beverages is entitled to a trial by jury. The results of any breath or blood test of such person is admissible into evidence.

A trial court may not accept a guilty plea to a lesser offense when the defendent has been charged with DUI or DUBAL and his blood or breath test reveals a blood alcohol level of 0.20 percent or more.

B. Effect of Proposed Changes:

This bill provides minimum mandatory fines and imprisonment for a person convicted of DUI, DUBAL, or DWI. The minimum penalties, which also include increased periods of revocation of a driver's license, are as follows:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: Fradley
Staff Director: Alberdi
Subject: Driving Under Influence

Bill No. And Sponsor:
CS/CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Civil Committee et al.

I. B. Effect of Proposed Changes: (continued)

Minimum Mandatory Penalties

	s. 316.193(1), (2) DUI	s. 316.193(3), (4) DUBAL	s. 860.01(2) DWI (Damage to Person or Property)	s. 860.01(2) DWI (Manslaughter)
1st Conviction	72 hrs. - 6 mo. $250 - $500 6 mo. revocation	48 hrs. - 90 days $250 - $500 6 mo. revocation	30 days - 1 yr. $300 - $1,000 *1 yr. revocation	90 days - 15 yrs. $1,000 - $10,000 *1 yr. revocation
2nd Conviction	*10 days - 6 mo. $500 - $1,000 12 mo. revocation	*10 days - 6 mo. $500 - $1,000 12 mo. revocation	30 days - 1 yr. $300 - $1,000 *1 yr. revocation	90 days - 15 yrs. $1,000 - $10,000 *1 yr. revocation
3rd Conviction	*30 days - 12 mo. $1,000 - $2,500 5 yr. revocation	*30 days - 12 mo. $1,000 - $2,500 5 yr. revocation	30 days - 1 yr. $300 - $1,000 *1 yr. revocation	90 days - 15 yrs. $1,000 - $10,000 *1 yr. revocation
1st Conviction w/BAL of .20	10 days - 6 mo. $500 - $1,000 6 mo. revocation	72 hrs. - 6 mo. $500 - $1,000 6 mo. revocation	Revocation for DWI is 1 yr. maximum.	
Conviction within 5 yrs. of DWI Manslaughter	30 days - 12 mo. $500 - $1,000 6 mo. - 5 yr. revo.	30 days - 12 mo. $500 - $1,000 6 mo. - 5 yr. revo.		

*Existing law.

The bill expands the scope of the alcohol education, evaluation, and treatment provided for in s. 316.193(5) to substance abuse education, evaluation, and treatment. The bill amends s. 322.261 to provide that a driver consents to a urine test for the purpose of detecting controlled substances, in addition to the breath test used to determine the alcohol level. Refusal to submit to a breath or urine test or both results in suspension of the driving privilege for three months; if the driving privilege has been previously suspended for refusing to submit, the driving privilege shall be suspended for six months.

The bill provides that a driver who is admitted to a hospital consents to a blood test for the purpose of determining the alcoholic content of the blood or the presence of controlled substances if administration of the breath or urine test is impractical or impossible. The blood test shall be performed in a reasonable manner. Any person capable of refusal shall be told that failure to submit to such blood test results in suspension of his driving privilege. If blood is withdrawn from an unconscious or incapacitated person, he shall be advised of the withdrawal, that he may withdraw consent for the use of such tests, and that such withdrawal of consent shall result in suspension of his driving privilege.

The procedures set forth in s. 322.261(1)(d)-(g) for suspension of the driving privilege upon a driver's refusal to submit to a breath test are extended to apply to a driver's refusal to submit to a urine and blood test. The clerk of the court shall schedule the lawful refusal hearing and shall notify the driver and state attorney of the hearing. If the driver fails to appear at the hearing, his driving privilege will be suspended. Section 322.261(1)(h) is amended to permit an arrested driver to request a urine or blood drug test if none is administered.

Sections 322.261(1)(b) and 322.262(3) are amended to read that analyses of breath and blood alcohol tests must have been performed substantially in accordance with HRS methods for the results of such tests to be admissible into evidence.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: Fradley
Staff Director: Alberdi
Subject: Driving Under Influence

Bill No. And Sponsor:
CS/CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Civil Committee et al.

I. B. Effect of Proposed Changes: (continued)

The bill deletes the requirement provided in s. 322.261(2)(e) of a written request for a blood withdrawal as a condition of immunity from liability for the attending physician, nurse, technician, or technologist.

The bill creates s. 322.2615 which provides that if a law enforcement officer has probable cause to believe that a motor vehicle driven by a person while under the influence of alcohol or controlled substances kills or seriously injures another person, the officer may require the driver to submit to a blood test.

Section 322.262(4) authorizes a jury trial for any person charged with driving under the influence of controlled substances. The bill also amends s. 322.28 to revoke a driver's license upon conviction of driving under the influence of controlled substances.

The bill amends 322.28(2)(e) to provide that no driving permit for business or employment shall be issued to a driver whose license has been revoked until 10 days after revocation.

Section 316.066(4) is amended to exclude the results of breath, urine, and blood tests from the confidential privilege of this section.

Section 322.281 provides that the court shall not accept a guilty plea to a lesser offense when the driver is charged with DUI or DUBAL and the test results show a blood alcohol level of 0.10 or more or the driver has refused to submit to a breath or blood test.

Section 860.01(2) is amended to provide that a person who damages person or property or kills another while under the influence of any controlled substance may be guilty of DWI. The bill further provides that alcohol and drug test results shall be admissible in a DWI prosecution.

The bill requires drivers license applicants to be tested on the laws and dangers relating to operating a motor vehicle under the influence of alcohol or controlled substances.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public: None.

B. Government:

The imposition of minimum mandatory jail sentences may increase the operating costs for local jails and may require construction of improvements or new facilities. HSMV reports that in 1980 53,029 persons were arrested for DUI and 8,279 drivers were arrested for DUBAL; 36,657 DUI offenders and 2,029 DUBAL violators were convicted. Similar figures are projected for 1981.

If more DUI and DUBAL cases are tried, the state may require additional prosecutors, investigators, and judges to handle the increased caseload. The state and local governments would also incur increased trial costs such as witness fees and jurors' per diem costs.

Law enforcement agencies may incur expenses related to drug test administration and analyses. The Department of Law Enforcement has projected that additional personnel and equipment needed to accommodate the increased workload may cost the state almost $300,000. The Department of Highway Safety and Motor Vehicles may face higher costs to contend with increased suspensions and revocations.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: Fradley
Staff Director: Alberdi
Subject: Driving Under Influence

Bill No. And Sponsor:
CS/CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Civil Committee et al.

II. B. Government: (continued)

The minimum fines provided by this bill should offset some of the expenses incurred by local governments from increased jail and trial costs.

III. COMMENTS:

In a recent decision by the Fourth District Court of Appeal, State v. Rafferty, 405 So. 2d 1004 (Fla. 4th DCA 1981), the court recognized that testing for drugs is constitutional even without the driver's consent or the benefit of a search warrant. Citing the United States Supreme Court in Schmerber v. California, the court ruled that blood and urine test results were properly admissible into evidence because the arresting officer had probable cause to believe that the defendant was driving under the influence of controlled substances. As the Legislature had not prohibited the taking of blood for the purpose of drug testing, the testing for drugs was constitutional in light of the Schmerber case. Significantly, the decision of Rafferty apparently authorizes the use of reasonable force to extract a blood sample for the purpose of drug testing if the arresting officer has probable cause to believe that the driver has been operating a motor vehicle while under the influence of controlled substances.

This opinion conflicts with the Third District Court of Appeal, which held that under current statutory law a person only consents to have his blood tested for alcohol and not for controlled substances. State v. Demoya, 380 So. 2d 505 (Fla. 3rd DCA 1980).

Similar bill, HB 946, has been referred to the House Committee on Appropriations.

IV. AMENDMENTS: None.

GENERAL REMARKS

AS DIRECTED, STAFF HAS PREPARED TWO COMMITTEE SUBSTITUTES. . . ONE DEALING WITH PROCEDURAL TYPE MATTERS, THAT IS PROVIDING FOR TESTING FOR DRUGS AND FOR THE ADMISSIBILITY OF EVIDENCE; THE OTHER DEALS WITH PENALTIES FOR DRIVING UNDER THE INFLUENCE.

THE PROCEDURAL COMMITTEE SUB IS ESSENTIALLY A FURTHER REFINEMENT OF A BILL WHICH THIS COMMITTEE HAS DEALT WITH FOR SOME TIME. LAST YEAR THE COMMITTEE PASSED THE SENATE BILL, BUT IT DIED ON THE SENATE SPECIAL ORDER CALENDAR FOR LACK OF TIME. THE COMPANION HOUSE MEASURE PASSED THE HOUSE, HOWEVER.

THIS YEAR A NUMBER OF BILLS HAVE BEEN REFERENCED TO THE COMMITTEE WHICH PROPOSE INCREASED PENALTIES FOR DRIVING UNDER THE INFLUENCE OF DRUGS OR ALCOHOL. STAFF HAS TRIED TO RECONCILE IN ONE COMMITTEE SUB THE VARIOUS APPROACHES TAKEN IN THOSE BILLS. TO ACCOMPLISH THAT, IT WAS NECESSARY TO MODIFY AND MELD TOGETHER THE APPROACHES. WHAT YOU HAVE BEFORE YOU IN THE PROPOSED PENALTY BILL IS NOT SO MUCH A STAFF RECOMMENDATION AS IT IS A STARTING POINT, A VEHICLE THAT WE CAN USE TO FASHION OUR IDEA OF WHAT THE APPROPRIATE CONSEQUENCES FOR BEING CONVICTED SHOULD BE.

HERE IS HOW I WOULD LIKE TO PROCEED.

FIRST, I WOULD LIKE WAYNE EVANS, ONE OF OUR STAFF ATTORNEYS, TO PRESENT FOR ALL OF YOU A BRIEF SYNOPSIS OF THE HIGHLIGHTS OF ALL THE BILLS WE HAVE BEFORE US TODAY, INCLUDING THE SALIENT PARTS OF THE TWO COMMITTEE SUBSTITUTES.

THEN, IF ANY SPONSOR WOULD LIKE TO SPEAK ABOUT PARTICULAR MEASURES IN HIS BILL OR THE COMMITTEE SUBSTITUTES, THE COMMITTEE WOULD CERTAINLY WISH THEM TO DO SO.

NEXT, IF WE HAVE REPRESENTATIVES WITH US TODAY WHO ARE SPECIFICALLY CONCERNED WITH THIS LEGISLATION, THE COMMITTEE WOULD ENCOURAGE. THEM TO SPEAK AT THIS TIME. (REP. BATCHELOR WILL BE THERE.)

AFTER THAT, I WOULD LIKE TO TAKE PUBLIC TESTIMONY OF ANY INTERESTED PERSONS ABOUT DUI.

AFTER WE HAVE TAKEN ALL THE TESTIMONY, WE NEED TO GO OVER THE POLICY ISSUES --- ESPECIALLY IN THE PENALTIES CS --- AND RESOLVE THEM IN AN ACCEPTABLE MANNER.

I ANTICIPATE THE VARIOUS SPONSORS AND INTERESTED PERSONS BEING REQUESTED TO SUPPLY THE NECESSARY IMPUT.

THEN, WE NEED TO TAKE UP THE PROCEDURES BILL. I DO NOT ANTICIPATE MANY CHANGES HERE BECAUSE WE HAVE SCRUTINIZED THIS BILL SEVERAL TIMES BEFORE.

SO IF ANY SPONSOR CAN REMAIN IT WOULD BE APPRECIATED.

THEN, WE NEED TO RESOLVE THE ISSUE OF ONE BILL OR TWO BILLS. IF WE CANNOT RESOLVE THE ISSUES HERE TODAY, I ANTICIPATE WE WILL T.P. THE BILL AND TAKE IT UP AGAIN. WHATEVER WE REPORT OUT I WANT TO BE OUR BEST EFFORT.

FINALLY, WILL ANY MEMBER OF THE COMMITTEE OR ANY SPONSOR WHO WISHES, PLEASE SIGN DURING OR IMMEDIATELY AFTER THE MEETING ANY CS JACKET FOR ANY MEASURE THEY WISH TO CO-SPONSOR.

ONE OTHER POINT -- THOSE BILLS DEALING WITH TESTING OF BOAT OPERATORS AND PENALTIES FOR OPERATING A BOAT UNDER THE INFLUENCE OF ALCOHOL HAVE BEEN AGENDAED TODAY ONLY IN SOFAR AS THEY ALSO RELATE TO THE TESTING AND PENALTIES APPLICABLE TO MOTOR VEHICLE OPERATORS. BECAUSE OF CERTAIN ISSUES ASSOCIATED ESPECIALLY WITH TESTING OF BOAT OPERATORS AND THE CONSEQUENCES FOR THEIR REFUSAL TO SUBMIT TO TESTING, WE PLAN TO DEAL WITH THOSE BILLS AGAIN AT A LATER MEETING.

DATE: January 29, 1982
April 27, 1982 (Final Update)

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	R.W.Evans	P.Liepshutz	Judi-Crim.	FAV/CS
2.			Judi-Civil	
3.			Approp.	

SUBJECT: DUI

BILL NO. AND SPONSOR: CS/SB 69, 432, 312, 351, 39, and 285 by the Committee on Judiciary-Criminal and Senators Jenne, Skinner, Langley, Jenkins, Lewis, D. Childers, Beard, Poole, Frank, Stuart, and Johnston

I. SUMMARY

A. Present Situation:

Three offenses are associated with the act of operating a motor vehicle under the influence of alcohol or any controlled substance: driving under the influence (DUI), driving with an unlawful blood alcohol level (DUBAL), and driving while intoxicated (DWI). Section 316.193 prohibits the offenses of DUI and DUBAL and provides penalties for these offenses. To convict a person for DUBAL, the state must prove that the driver operated a motor vehicle with a blood alcohol level (BAL) of .10 or higher; the results of a scientific test, such as a breath test, would be necessary to establish the BAL. To prove DUI, the state may use any relevant and competent evidence to demonstrate impairment of the driver's normal faculties while operating his motor vehicle; test results to demonstrate the BAL, the results of a field sobriety test, and testimony from witnesses, when admitted into evidence, could establish such impairment.

Section 860.01 prohibits driving while intoxicated. Generally, this offense is charged when the automobile of an intoxicated person causes damage to a person or property or the death of another person. DWI manslaughter, which may be charged if a death occurs, is a second degree felony.

The Florida Statutes do not provide minimum mandatory sentences for first convictions of DUI, DUBAL, or DWI. The court in its discretion may impose fines and imprisonment for a driver convicted of any of these offenses. Minimum imprisonment terms are mandated for 2 or more convictions.

The statutes authorize alcohol testing, but do not authorize testing for controlled substances. Thus, if a law enforcement officer has probable cause to believe a driver has operated a motor vehicle under the influence of alcohol, he can request the driver to submit to a breath test; if the officer has probable cause to believe the driver is under the influence of any controlled substance, however, the officer does not have statutory authority to request the driver to submit to a drug test.

Presently, a driver may refuse to take a breath test, but his driving privilege shall be suspended for 3 months; a temporary driving permit may be available. The courts do not authorize law enforcement to use reasonable force to administer a test because the driver has the option, by statute, to refuse to submit. The appellate courts are split on whether such refusal is admissible into evidence.

A court may require an offender convicted for DUI, DUBAL, and DWI to attend an alcohol education course. Section 322.291, however, requires a person whose license has been revoked upon conviction for any of these offenses to attend such a course before the driving privilege will be reinstated. Sections 322.27 and 322.28 provide minimum license revocation periods upon conviction for DWI, DUI, and DUBAL. Although their license has been revoked, convicted offenders may petition the Department of Highway Safety and Motor Vehicles (HSMV) for a temporary driving permit for business or employment purposes.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: R.W.Evans
Staff Director: P.Liepshutz
Subject: DUI

Bill No. And Sponsor:
CS/SB 69, 432, 312, 351, 39, and 285 by the Committee on Judiciary-Criminal and Senators Jenne, Skinner, Langley, Jenkins, Lewis, D. Childers, Beard, Poole, Frank, Stuart, and Johnston

The courts interpretation of existing statutes has created evidentiary problems for prosecutors. The courts require strict compliance with rules and regulations established by the Department of Health and Rehabilitative Services (HRS) for administration and analysis of alcohol testing; a deviation between the rules and actual procedure may render the test results inadmissible, even though the results are otherwise valid. Also, the courts have construed s. 316.066 to exclude test results when the officer administered such test as a basis for completing his investigation of an accident; again, the test results are inadmissible in this instance even though the results are otherwise valid.

If a defendant is convicted of DUI or DUBAL and the test results in connection with the violation reveal a BAL of .20 or higher, s. 322.281 prohibits the withholding of adjudication by the trial court. The statute also precludes the trial court from accepting a guilty plea to a lesser offense when the defendant has been charged with DUI or DUBAL.

B. Effect of Proposed Changes:

The committee substitute provides minimum mandatory fines and imprisonment for a person convicted of DUI, BUBAL or DWI. The minimum penalties, which also include increased periods of revocation are as follows:

Minimum Mandatory Penalties

	s. 316.193(1),(2) DUI	s. 316.193(3),(4) DUBAL	s. 860.01(2) DWI (Damage to Person or Property)	s. 860.01(2) DWI (Manslaughter)
1st Conviction	72 hrs. - 6 mo. $250 - $500 6 mo. revocation	48 hrs. - 90 days $250 - $500 6 mo. revocation	30 days-1 yr. $300 - $1000 *1 yr. revoc.	90 days-15 yrs. $1000 - $10,000 *1 yr. revoc.
2nd Conviction	*10 days-6 mo. $500 - $1000 12 mo. revocation	*10 days-6 mo. $500 - $1000 12 mo. revocation	30 days-1 yr. $300 - $1000 *1 yr. revoc.	90 days-15 yrs. $1000 - $10,000 *1 yr. revoc.
3rd Conviction	*30 days-12 mo. $1000 - $2500 5 yr. revocation	*30 days-12 mo. $500 - $2500 5 yr. revocation	30 days-1 yr. $300 - $1000 *1 yr. revoc.	90 days-15 yr. $1000 - $10,000 *1 yr. revoc.
1st Conviction w/BAL of .20	10 days-6 mo. $500 - $1000 6 mo. revoc.	72 hr.-6 mo. $500 - $1000 6 mo. revoc.	Revocation for DWI is 1 yr. minimum.	
Conviction within 5 Yrs. of DWI Manslaughter	30 days-12 mo. $500 - $1000 6 mo. - 5 yr. revo.	30 days-12 mo. $500 - $1000 6 mo. - 5 yr.revo.		

*Existing law.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: R.W.Evans
Staff Director: P.Liepshutz
Subject: DUI

Bill No. And Sponsor:
CS/SB 69, 432, 312, 351, 39, and 285 by the Committee on Judiciary-Criminal and Senators Jenne, Skinner, Langley, Jenkins, Lewis, D. Childers, Beard, Poole, Frank, Stuart, and Johnston

The bill amends s. 316.193 to lower the unlawful blood alcohol level to .08. The bill also expands the scope of the alcohol education, evaluation, and treatment provided for in s. 316.193(5), Florida Statutes, to substance abuse education, evaluation, and treatment. The bill amends s. 322.261 to provide that a driver consents to a urine test for the purpose of detecting controlled substances, in addition to the breath test provided therein. The urine test must be incidental to a lawful arrest and administered at the request of a law enforcement officer having reasonable cause to believe the person was driving or had actual physical control of a motor vehicle while under the influence of controlled substances. The urine test shall be administered in a reasonable manner with regard to the individual's privacy and accuracy of the specimen. Refusal to submit to a breath or urine test or both results in suspension of the driving privilege for three months; if the driving privilege has been previously suspended for refusing to submit, the driving privilege shall be suspended for six months.

The bill further provides that a driver who is admitted to a hospital consents to a blood test for the purpose of determining the alcoholic content of the blood or the presence of controlled substances if administration of the breath or urine test is impractical or impossible. The blood test shall be performed in a reasonable manner. Any person capable of refusal shall be told that failure to submit to such blood test results in suspension of his driving privilege. If blood is withdrawn from an unconscious or incapacitated person, he shall be advised of the withdrawal, that he may withdraw his consent, and that such withdrawal of consent shall result in suspension of his driving privilege.

The procedures set forth in s. 322.261(1)(d)-(g) for suspension of the driving privilege upon a driver's refusal to submit to a breath test are extended to apply to a driver's refusal to submit to a urine test. The clerk of the court shall schedule the lawful refusal hearing and shall notify the driver and state attorney of the hearing. If the driver fails to appear at the hearing, his driving privilege will be suspended. Section 322.261(1)(h) is amended to permit an arrested driver to request a urine or blood drug test if none is administered.

Sections 322.261(1)(b) and 322.262(3) are amended to read that analyses of breath and blood alcohol tests must have been performed substantially in accordance with HRS methods for the results of such tests to be admissible into evidence.

The bill deletes the requirement provided in s. 322.261(2)(e) of a written request for a blood withdrawal as a condition of immunity from liability for the attending physician, nurse, technician, or technologist.

The bill creates s. 322.2615, Florida Statutes, to provide that if a law enforcement officer has probable cause to believe that a motor vehicle driven by a person while under the influence of alcohol or controlled substances kills or seriously injures another person, the officer may require the driver to submit to a blood test. The test may be administered as a drug or alcohol test. The blood test shall be performed in a reasonable manner.

Section 322.262(4), as amended, authorizes a jury trial for any person charged with driving under the influence of controlled substances. The bill also amends s. 322.28, Florida Statutes, to suspend and revoke a driver's license or privilege upon conviction of driving under the influence of controlled substances.

Section 322.271 is amended to exclude a driver who refuses to submit to the chemical test or tests provided in s. 322.261, from modification of revocation or suspension of the driver's license. In other words, a driver whose license is suspended for refusal to submit will no longer be eligible for a temporary driver's permit.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: R.W.Evans
Staff Director: P.Liepshutz
Subject: DUI

Bill No. And Sponsor:
CS/SB 69, 432, 312, 351, 39, and 285 by the Committee on Judiciary-Criminal and Senators Jenne, Skinner, Langley, Jenkins, Lewis, D. Childers, Beard, Poole, Frank, Stuart, and Johnston

Also, the bill amends 322.28(2)(e) to provide that no driving permit for business or employment shall be issued to a driver whose license has been revoked until 10 days after revocation.

Section 316.066(4) is amended to specifically exclude the results of breath, urine, and blood tests from the confidential privilege of this section. Such results could, therefore, be admissible into evidence even if the tests were administered as a basis for completing an accident report.

The bill also amends s. 322.281 to provide that the court shall not accept a guilty plea to a lesser offense when the driver is charged with DUI or DUBAL and the test results show a blood alcohol level of .08 or more or the driver has refused to submit to a breath or blood test.

Section 860.01(2) is amended to provide that a person who damages person or property or kills another while under the influence of any controlled substance may be guilty of DWI. The bill further provides that alcohol and drug test results shall be admissible in a DWI prosecution.

In addition, the bill amends s. 316.193 to require that all offenders convicted of DUI, DUBAL or DWI shall attend a substance abuse education course. The bill also requires examination of drivers license applicants of their knowledge of the laws and dangers relating to operating a motor vehicle under the influence of alcohol or controlled substances.

II. ECONOMIC IMPACT AND FISCAL NOTE

A. Public:

The minimum fines provided could have a substantial fiscal impact on offenders convicted of DUI, DUBAL, or DWI.

B. Government:

It is very difficult to estimate the fiscal impact of this bill upon state and local government. The imposition of minimum mandatory jail sentences would probably increase the operating costs for local jails and may require construction of improvements or new facilities. HSMV reports that in 1980, 53,029 persons were arrested for DUI and 8,279 drivers were arrested for DUBAL; 36,657 DUI offenders and 2,029 DUBAL violators were convicted. Similar figures are projected for 1981.

The Florida Council on Criminal Justice in a study entitled "Recommendations, Strategies and Alternatives for Funding Local Jail Functions" notes that the average daily cost per inmate in local jails is estimated between $20 - $25. The Florida Sheriff's Association reports that construction costs for 6 jails recently completed or currently under construction averaged $41,099 per bed.

The number of persons who will be sentenced according to the proposed minimum mandatory sentences, however, cannot be projected. Juries which have traditionally demonstrated a reluctance to convict defendants of DWI and DUBAL, may refuse to return guilty verdicts on some offenders. Also, judges may simply avoid imposing jail time even when the minimum mandatory sentence appears to be applicable. The number of trials may increase if defendants who are unwilling to plead to a sentence carrying a minimum mandatory sentence seek a trial on the offense.

If a large number of offenders are incarcerated pursuant to the minimum mandatory sentences, the fiscal impact to local governments would be substantial. Also, if more DUI and DUBAL cases are tried, the state may require additional prosecutors, investigators, and judges to handle the increased caseload; the state would face salary expenses for these personnel. The state and local governments would also incur increased trial costs such as witness fees and jurors per diem costs.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: R.W.Evans
Staff Director: P.Liepshutz
Subject: DUI

Bill No. And Sponsor:
CS/SB 69, 432, 312, 351, 39, and 285 by the Committee on Judiciary-Criminal and Senators Jenne, Skinner, Langley, Jenkins, Lewis, D. Childers, Beard, Poole, Frank, Stuart, and Johnston

The bill also provides for minimum fines. These fines could offset some of the expenses incurred by local governments from increased jail and trial costs. State attorneys have pointed out, however, that many DUI and DUBAL defendants are indigent and would be unable to pay large fines.

The drug test proposed in this bill may increase the prosecutions for driving under the influence of controlled substances. Accordingly, increased prosecutions and the likelihood of increased convictions may result in higher costs to affected state and county agencies. Law enforcement agencies may incur expenses related to drug test administration and analyses and state attorneys may be prosecuting more cases. The Department of Law Enforcement has projected that additional personnel and equipment needed to accomodate the increased workload may cost the state almost $300,000. The Department of Highway Safety and Motor Vehicles may face higher costs to contend with increased suspensions and revocations. In addition, the state may incur increased costs relating to substance abuse education, evaluation, and treatment.

III. COMMENTS

In a recent decision by the Fourth District Court of Appeal, State v. Rafferty, 405 So.2d 1004 (Fla. 4th DCA 1981), the court recognized that testing for drugs is constitutional even without the driver's consent or the benefit of a search warrant. Citing Schmerber v. California, the court ruled that blood and urine test results were properly admissible into evidence because the arresting officer had probable cause to believe that the defendant was driving under the influence of controlled substances. As the Legislature had not prohibited the taking of blood for the purpose of drug testing, the testing for drugs was constitutional in light of the Schmerber case. Significantly, the decision of Rafferty apparently authorizes the use of reasonable force to extract a blood sample for the purpose of drug testing if the arresting officer has probable cause to believe that the driver has been operating a motor vehicle while under the influence of controlled substances.

House bill 946 by the Committee on Criminal Justice is similar to CS/SB 69, 432, 312, 351, 39, and 285.

CS/SB 69 et al passed the Senate as CS/CS/CS/SB 69, 432, 312, 351, 39, and 285. The Senate bill was amended in the House by compromise language agreed to by the House and Senate. The bill as amended passed both houses and was approved by the Governor; the bill was assigned Chapter No. 82-155, Laws of Florida. The major difference between CS/SB 69 et al and CS/CS/CS/SB 69 et al lies in the penalties provided for violation of DUI, DUBAL, or DWI. The testing and evidentiary provisions remain substantially the same in the final bill.

As enacted, the bill requires 50 hours of community service for 1st conviction; minimum fines of $250, $500, and $1000 are required for 1st, 2nd, and 3rd convictions. Existing law remains unchanged for incarceration: 1st offenders may be imprisoned up to 90 days, 2nd offenders may be imprisoned up to 6 months, and 3rd offenders may be imprisoned up to 12 months. In the case of two convictions of DUI, DWI, or DUBAL within 3 years, the court shall imprison the defendant for at least 10 days; for three convictions within 5 years, the court shall imprison the defendant for at least 30 days.

The bill further provides increased periods of license revocation. For a 1st conviction of DUI or DUBAL, the license shall be revoked no less than 180 days nor more than one year. For a 1st conviction of DWI, the license shall be revoked for any length of time not less than one year. Upon a 2nd conviction of DUI, DUBAL, or DWI within 5 years of a prior conviction of any of such offenses, the license shall be revoked for 5 years. For a 3rd conviction of DUI, DUBAL, or DWI, in any combination, within 10 years from the date of a prior conviction, the license shall be revoked for 10 years. No drivers license or privilege shall be issued to any person

April 27, 1982 (Final Update)

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: R.W.Evans
Staff Director: P.Liepshutz
Subject: DUI

Bill No. And Sponsor:
CS/SB 69 et al by the Committee on Judiciary-Criminal and Senators Jenne, Skinner, Langley & others

with 4 or more convictions of DUI, DUBAL, or DWI, in any combination, or to a driver with a DWI or vehicular manslaughter offense who is subsequently convicted of DUI, DUBAL, or DWI. A 1st offender of DUI, DUBAL, or DWI may obtain a temporary driving permit after completing a substance abuse education course; permits are not available to repeat offenders.

STATE OF FLORIDA
HOUSE OF REPRESENTATIVES

Prepared 3/ 3/82
by the Committee on
Appropriations

1982
FISCAL NOTE

CS/CS/CS SB 69 et al.
Bill Number
REVISED

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

I. DESCRIPTION OF BILL

A. Fund or Tax Affected

General Revenue

B. Principal Agency Affected

County Jails
Department of Corrections (See Comments)
Judicial Branch (See Comments)

C. Narrative Summary

Relates to driving under the influence. Substantial changes--See bill.

Effective date: July 1, 1982.

II. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

A. Non-Recurring or First Year Start-up Effects

See comments

B. Recurring or Annualized Continuation Effects

See comments

C. Long Run Effects other than Normal Growth

See comments

D. Source of Funds

See comments

III. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

A. Non-Recurring or First Year Start-up Effects

County Jails: 'A 1981 jail study by the Florida Bureau of Criminal Justice Assistance reports an average construction cost of $39,194 per jail bed. Under new DOC rules, the estimated bed space capacity (taking into consideration bed space under construction) was 11,569 in September 1981, a figure which is 800 below the state's current jail population. Given this situation and current conviction rates, the proposed DWI minimum mandatory standards may result in a fixed capital figure of $16,692,886 for county jail construction of 425 additional beds.

B. Recurring or Annualized Continuation Effects

County Jails: Based upon 1980 DWI convictions statewide, total county jail operating costs statewide is estimated at $4,268,069. The cost burden would fall more heavily upon those counties with higher DWI convictions, as well as those with more crowded facilities (as noted above in Section A). This figure does not take into account the possible deterrent affect that the bill may have, which could lower statewide DWI offenses.

The bill also provides for imposing fines in addition to confinement. Although the amount of the fine is variable, any increase in the "average" fine imposed would result in increased revenues accruing to the county fine and forfeiture fund as a potential offset to increased county costs.

C. Long Run Effects other than Normal Growth

None

IV. DIRECT IMPACT ON THE PRIVATE SECTOR

According to the Department of Insurance, the annual economic loss (including insurance claims, medical expenses, etc.) due to alcohol-related accidents is estimated to be $180,675,000. Should the bill prove to be a deterrent in the number of alcohol-related accidents, a private sector savings could result. Additionally, those states which have instituted similar legislation (in particular, Maine and California) have experienced at least a short-term decline of approximately 50% in alcohol-related motor vehicle fatalities.

V. COMMENTS:

DEPARTMENT OF CORRECTIONS:

Because of the mandatory jail sentence, the Department of Corrections could be indirectly affected by the legislation, since it will be required to remove more rapidly those prisoners who are awaiting transfer from county jails.

JUDICIAL BRANCH:

In respect to fiscal impact on the judicial branch, it is difficult to determine an exact figure because of the variable factors involved. It appears that the following assumptions could be made:

1. If a defendant can be sentenced to imprisonment, he or she has the right to request trial before a jury. As a result of the required mandatory jail time to be served upon conviction, an increased number of defendants will probably request a jury trial.

2. Additional trials before a jury would probably incur additional costs as follows:

a. Clerk of the Circuit Court (County)--If the jury pool is not adequate, cost of summoning additional jurors; etc.

b. State--Per diem and travel costs for both expert witnesses and jurors for the additional trials.

c. State and County-- Additional personnel needs, resulting from increase workload required of judges, clerks of court, state attorneys, public defenders, and other court related personnel, including medical examiners and their staffs. Increased workload would be related to increased time required for proceedings and any additional research and document preparation prior to trial or other proceedings.

d. 1) State--State Attorneys: According to the Florida Prosecuting Attorney's Association (FPAA), 60% of those individuals currently convicted who are eligible for the mandatory jail sentence will request a trial (13,918 trials). Based upon an average of 315 trials per year per assistant state attorney (FPAA), this would require:

44 additional Assistant State Attorneys

22 additional Legal Secretary I

22 Investigators

88 F.T.E. TOTAL

The annualized costs for these positions would be $2,014,348.

These figures do not take into consideration the possible deterrent affect that the bill may have, which could lower statewide DWI offenses.

2) State--Public Defenders: There would probably be an increased need for services of a public defender to assist indigent defendants. Determination of indigency requires time of the court. However, the Florida Public Defenders Coordination Office could not determine the fiscal impact.

e. State and County--Cost to law enforcement agencies for any additional time required for an officer to appear as a witness.

Staff Director

Sheldon A. Gusky
Staff Analyst

Bill Analysis

FLORIDA HOUSE OF REPRESENTATIVES
RALPH H. HASEN, JR., Speaker; BARRY KUTUN, Speaker pro tempore
COMMITTEE ON CRIMINAL JUSTICE

Lawrence J. Smith
Chairman
Robert Reynolds
Vice Chairman

STAFF SUMMARY AND ANALYSIS

CS/CS/CS for SB 69 as amended by the House of Representatives

DATE: April 5, 1982

I. SUMMARY

A. PRESENT SITUATION:

Laws relating to driving under the influence or driving while intoxicated are located in several sections of the statutes.

Additionally, a number of legislators have expressed concern that problems exist with the present statutes relating to apprehension, prosecution and punishment of substance abusing drivers.

B. EFFECT OF PROPOSED CHANGES:

This bill consolidates under Chapter 316, Florida Statutes, the separate prohibitions against driving under the influence (DUI), driving while intoxicated (DWI) and driving with an unlawful blood alcohol level (DUBAL). The minimum penalties for these offenses will be identical and a conviction of any of these offenses will be considered a prior conviction of all three prohibitions in setting sentences for subsequent convictions. The bill also establishes minimum mandatory sentences, mandatory fines, extended periods of license revocation, and mandated attendance at a substance abuse education course.

The bill will amend alcohol abuse treatment programs to provide for substance abuse treatment. The term "substance abuse" is defined.

The bill provides for a urine test for the detection of controlled substances in the same manner that a breath test is performed to determine a blood alcohol level. The tests must be incidential to a lawful arrest and made at the request of a law enforcement officer having reasonable cause to believe the driver is under the influence of alcohol or controlled substances. The bill provides that the urine test will be performed so as to maintain the privacy of the driver and the accuracy of the specimen.

The bill provides that the officer may request that the driver submit to either a breath or a urine test, or both. Refusal to submit to a test carries a three month license suspension unless a driver has previously refused to submit in which case a six month suspension will result. Evidence of refusal to submit will be admissible in any criminal proceeding.

The bill provides for a pre-arrest breath test which may be requested by the officer. However the taking of such a pre-arrest test will not be deemed to be compliance with the tests described above, and the results of such a pre-arrest test are not admissible into evidence in either a civil or a criminal proceeding.

The bill provides that breath analysis tests performed pursuant to this section must be administered substantially in accordance with methods approved by the Department of Health and Rehabilitative Services. An insubstantial deviation between approved methods and the actual test performed shall not render the test results invalid.

In situations where a driver has been involved in a motor vehicle accident and has been admitted to a medical facility, the bill provides that a blood test may be performed in a reasonable manner when a breath or urine test is not available. The driver may refuse to consent. Such refusal carries the same 3/6 month license suspension as discussed above. A driver who, due to unconsciousness or some other mental or physical condition, is unable to refuse to consent to a blood test, shall have the test performed. Upon regaining consciousness or as soon as practical, such a driver shall be advised of the test, his right to refuse, and given the option to do so. Such refusal will carry the same 3/6 month license suspension as discussed above.

A driver whose license is suspended for refusal to submit to testing may appeal such a suspension under existing law. This bill will provide that it is the responsibility of the clerk of the court to schedule the hearing of the appeal and provide proper notice to specified parties. If the driver fails to appeal, the clerk will notify the Department of Highway Safety and Motor Vehicles which effectuates the required license suspension.

The bill provides that only a physician, a registered nurse, a licensed clinical laboratory technologist or technician, or a certified paramedic may withdraw blood for test purposes.

The driver will be permitted to have, at his own expense, a test administered in addition to the test required by the law enforcement officer.

The bill provides that no medical facility or medical personnel shall be subject to any civil or criminal liability as the result of proper withdrawal or analysis of a blood, urine, or breath specimen when the test is requested by a law enforcement officer.

In situations where a law enforcement officer has probable cause to believe a driver while under the influence of alcohol or controlled substances has caused the death of or serious bodily injury to a person, the officer will have the ability to demand the driver's submission to a blood test for determining alcohol content or the presence of controlled substances. The officer may use reasonable force to effectuate the test if required. The blood test will be performed in a reasonable manner. "Serious bodily injury" means physical pain, illness or any impairment of physical condition which creates a substantial risk of death or serious, personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Only a physician, a registered nurse, a licensed clinical laboratory technologist or technician, or a certified paramedic may perform the test. Chemical analysis of the person's blood must be performed substantially in accordance with DHRS-approved methods.

The bill provides that criminal charges resulting from the incident giving rise to the officer's demand for testing shall be tried concurrently with any changes arising from the driver's refusal to submit to the required blood test. If the charges are tried separately, the fact that the driver refused, resisted, or withdrew his consent for the test shall be admissible at the trial of the criminal offense which gave rise to the demand for testing.

Currently a driver whose license has been suspended due to his refusal to submit to testing has the right to petition the Department of Highway Safety and Motor Vehicles for modification of the suspension. The bill will restrict that right to those drivers who have never previously had their licenses suspended due to a refusal to submit. In other words, a driver refusing a second request will have no right to appeal his license suspension.

Current law permits the issuance of a business use license to a driver whose license is under suspension. The bill provides that such a permit may not be issued to a driver with two or more convictions. Additionally, first offenders must provide proof of having completed a prescribed education course prior to the issuance of a temporary business use permit.

The bill provides that no license shall be issued to any driver with a previous manslaughter conviction or with four or more DWI convictions.

In regards to license suspensions resulting from convictions, the bill provides that a second DWI conviction shall carry a suspension of not less than five years. A third conviction will carry a suspension of not less than ten years. As stated above, a fourth or subsequent conviction will mandate a permanent suspension.

Current law provides that accident reports are confidential and are for the use of state agencies for accident prevention purposes. This bill provides that the results of breath, blood, or urine tests shall not fall within the confidential privilege but shall be admissible into evidence in accordance with statutory provisions.

This bill directs the Department of Highway Safety and Motor Vehicles to include questions on drivers' examinations concerning DUI laws and the effect of alcohol and controlled substances on driving functions.

Finally, the legislation prohibits sentence suspension and the withholding of adjudication. Plea bargaining is not addressed, however.

The bill provides that the act shall take effect July 1, 1982.

II. FISCAL IMPACT

An increase in DWI arrests, prosecutions, and convictions is anticipated, due primarily to the addition of controlled substances to the current statute. The approximate number of increased arrests is indeterminate.

Information from the State Courts Administrator's office indicates that of the 10,107 drivers who refused to submit to testing in 1980, only 7.716 licenses were suspended. The total number of suspected DWI offenders is not available, neither is a breakdown in regard to drivers involved in death or serious bodily harm.

III. COMMENTS

The United States Supreme Court in Schmerber v. California, 384 U.S. 757 (1966), held that complusory taking of a blood sample from a driver suspected of being intoxicated was not violative of constitutional rights. In several cases, Wilson v. State, 225 So.2d 321, 324 (Fla. 1969), and State v. Mitchell, 245 So.2d 618 (Fla. 1971), the Florida Supreme Court followed the ruling of the federal court in upholding the constitutionality of the use of force to take a blood sample. However, the Florida Court has been unwilling to permit use of force because the state's "implied consent" statute did not authorize such action. As stated recently in Sambrine v. State, 386 So.2d 546 at 548 (Fla. 1980):

> Any careful reading of section 322.261 leads to inescapable conclusion that a person is given the right to refuse testing. If this were not so, it is unclear why the legislature provided for a definite sanction and a detailed procedure for the enforcement of such sanction. (Staff Note-The sanction being suspension of the license.)

The proposed bill would alter the current statute to provide that an officer could require a driver to submit to the blood test when a motor vehicle accident has occurred resulting in death or serious bodily injury and the driver is suspected of intoxication.

Consolidation of the pertinent sections should serve to encourage prosecution in that the statutes will be contained in a single chapter relating to impaired driving.

Prepared by: Thomas R. Tedcastle

Staff Director: Thomas R. Tedcastle

REVISED: February 9, 1982

DATE: February 2, 1982

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE		ACTION
1.	Evans	Liepshutz		1. J.Crim.	Fav/CS
2.	Fradley	Alberdi		2. J. Civ.	Fav/CS/CS
3.	Gaines	Beggs		3. F & T	
4.	Eccles	Smith		4. Appro	

SUBJECT:

Driving Under Influence

BILL NO. AND SPONSOR:

CS/CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Civil Committee, & Senators Jenne, Skinner, Langley, Jenkins, Lewis, Don Childers, Beard, Poole, Frank, Stuart, & Johnston

Amendment #3 (Floor):

I. SUMMARY:

A. Present Situation:

The Department of Corrections, under Chapter 951, Florida Statutes, is authorized and directed to adopt and enforce the rules prescribing standards and requirements for the conditions in local correctional facilities. The facilities are inspected annually to determine whether such standards under Chapter 33-8, Florida Administrative Code, are being met.

Local correctional facilities have been troubled with management problems in the areas of population, security, staffing, funding, enforcement, maintenance, and supervision. Courts are ruling against local government authorities in inmate class action suits challenging jail conditions. Typically, these suits assert that jail detention and inspection are inadequately performed. They are an attempt to enforce regulations that should have been complied with and enforced through the inspection process by the Department of Corrections. As a result, the Department recently adopted rules that prescribe new standards and requirements relating to the facilities and provide reporting and enforcement procedures.

The Department of Corrections estimates the economic impact upon persons directly affected by the proposed rules is $78.6 million. Currently, funding to correct minor deficiencies comes from the sheriff's budget while major corrections are funded by the county budget. Despite the availability of these funds many deficient conditions have gone uncorrected for years.

B. Effect of Proposed Changes:

1. The amendment levies an alcoholic beverage surtax equal to 15 percent of the existing state excise taxes on beer, wine, and liquor. The tax is to be administered as the present beverage taxes and revenue deposited into the newly-created County Jail Construction Trust Fund.

2. The funds in the County Jail Construction Trust Fund may be used solely for the construction of county correctional facilities. The state is authorized to pledge proceeds from the surtax for the payment of principal and interest and necessary reserves on bonds to construct the facilities. Bonds may not be issued in an amount in excess of $365 million nor for a period exceeding 20 years.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: Gaines
Staff Director: Beggs
Subject: Driving Under Influence

BILL NO. AND SPONSOR:

CS/CS/SBs 69, 432, 312, 351, 39, & 285 by Judiciary-Civil Committee & Sen. Jenne et al

3. The amendment creates a committee to be known as the Florida Local Correctional Facilities Advisory Committee to recommend proposed local correctional facility construction and renovation projects on a priority basis to be approved by the Administration Commission. The membership of the committee would be composed of four persons appointed by the Governor, two members each of the Florida Senate and House of Representatives selected by the presiding officers, and the Secretary of the Department of Corrections or his designee. The committee would be required to consider and evaluate the merits of each project submitted for approval and ensure that each proposed project would meet the stated purpose of providing adequate local correctional facilities based on demonstrated need.

4. The committee must consider the following criteria:

(a) The results of jail inspections conducted by the department pursuant to s. 951.23, identifying deficiencies and needs for local correctional facilities.

(b) Bed space requirements through the year 2000 as determined or projected by the department.

(c) Whether the proposed local correctional facility will comply with department standards as prescribed by rules and applicable law.

(d) Submission of a construction or renovation plan which meets the minimum architectural provisions and construction standards set forth in Section 33-8.15, F.A.C.

(e) The capability of existing facilities to be renovated to provide local correctional facility needs unless it can be demonstrated that such renovation is not cost effective or will not comply with department standards.

(f) The availability, accessibility, extent of current utilization and adequacy of like and existing local correctional facilities.

5. The amendment requires that local facilities provide adequate staffing and appropriate administrative and financial support prior to approval by the Administration Commission for bond proceeds. In addition, the local government is required to provide assurances that the number of deputy sheriffs assigned to direct law enforcement duties will not be reduced to meet the staffing requirements of the new or expanded local correctional facility.

6. The amendment establishes the local share of financial responsibility for the financing of facilities at 20% of total costs. Payment may be made on an annual basis with the local government paying 20% of the principal and interest required or the local government may pay the 20% in a lump sum prior to the commencement of construction. The amendment also authorizes the pledging of state revenue sharing entitlements as the participation funds for local governments.

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7. The amendment allows local governments to submit applications for reimbursement grants for up to 80% of the total cost of correctional facilities constructed or renovated subsequent to July 1, 1975 through the use of county revenues other than federal grants.

8. The amendment provides that where the Department of Corrections identifies a need within the facilities master plan for a state correctional institution, the Administration Commission shall require such county to incorporate within established zoning classifications publicly-owned correctional facilities as a permitted use as a condition of receiving funds under the amendment.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This amendment will shift the burden of 80% of the funding of correctional facilities from specific local governments and their taxpayers to consumers of alcoholic beverages statewide.

B. Government:

1. According to current estimates, local governments will need 7,984 new beds by the year 2000. At an average cost of $36,000 per bed, $287.4 million are needed to fund this construction. In addition, 3,924 beds have been constructed since 1975 at an average cost of $20,326 per bed. The total cost to local governments for these beds was $79.8 million. Of this cost $4.2 million was paid from LEAA funds leaving a balance of $75.6 million. The reimbursement cost to the state for this construction is $60.5 million.

Total need for new construction, renovation and reimbursement is estimated at $363.0 million. Annual debt service would total $60.0 million. The state's share would be $48.0 million and local government would constitute $12.0 million.

2. The Alcoholic Beverage Surtax at a rate of 15% will generate approximately $50 million annually. Excise taxes on alcoholic beverages have grown at an average rate of 6.8% since 1977-78.

III. COMMENTS:

Technical errors:

This amendment:

1. does not actually authorize the state to issue bonds;

2. does not specify whether bonds should be issued in one general issue or in several series;

3. requires that funds from the trust fund shall be used solely for the construction of county correctional facilities (however, it authorizes the reimbursement of local governments for existing facilities);

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4. creates s. 215.6025, Florida Statutes, which designates tax collections from a tax on legal services of attorneys to be used to fund the building of local correctional facilities.

SUMMARY OF CS for SB 69, 432, 312, 351, 39 & 286

I. MINIMUM MANDATORY PENALTIES

A. DUI s.316.193(1)

1. FIRST CONVICTION: 72 HOURS IMPRISONMENT, $250 FINE
2. 2nd, 3rd & SUBSEQUENT CONVICTIONS: MIN. MANDATORY IMPRISONMENT SAME AS EXISTING LAW (10 DAYS, 30 DAYS) BUT MIN. MAND. FINES ARE NOW PROVIDED ($500, $1000)
3. .20 BLOOD ALCOHOL LEVEL: 10 DAYS, $500

B. DUBAL s.316.193(3)

1. FIRST CONVICTION: 48 HOURS IMPRISONMENT, $250 FINE
2. 2nd, 3rd, SUBSEQUENT CONVICTIONS: MIN. MAND. IMPRISONMENT SAME AS EXISTING LAW (10 DAYS, 30 DAYS) BUT MIN. MAND. FINES ARE NOW PROVIDED.
3. .20 BLOOD ALCOHOL LEVEL: 72 HOURS, $500

C. DUI OR DUBAL CONVICTION W/IN 5 YRS OF DWI MANSLAUGHTER

1. 30 DAYS, $500

D. DWI 860.01(2)

1. DAMAGE TO PERSON OR PROPERTY: 30 DAYS, $300
2. MANSLAUGHTER - 90 DAYS, $1000

E. DUI, DUBAL

1. INCREASED PERIODS OF LICENSE REVOCATION

II. DRUG TEST

A. URINE TEST: ANALAGOUS TO BREATH TEST

B. ADMINISTERED AT REQUEST OF LAW ENFORCEMENT OFFICER WHO HAS PROBABLE CAUSE TO BELIEVE DUI CONTROLLED SUBSTANCES

C. ADMINISTERED IN REASONABLE MANNER WITH REGARD TO PRIVACY OF INDIVIDUAL TESTED

D. ADMINISTERED IN MOBIL UNIT OR A FACILITY EQUIPPED TO ADMINISTER SUCH TEST (NO ROADSIDE URINE TEST)

E. NOT MANDATORY - DRIVER MAY REFUSE & FACE 3 MO. LICENSE SUSPENSION, 6 MO. FOR 2nd REFUSAL

REFUSE BREATH OR URINE TEST - SUSPENSION WITH NO TEMPORARY PERMIT.

III. BLOOD TEST

A. ACCIDENT INVOLVING DEATH OR SERIOUS BODILY INJURY

B. OFFICER HAS PROBABLE CAUSE TO BELIEVE DUI ALCOHOL OR CONTROLLED SUBSTANCES.

C. OFFICER MAY USE REASONABLE FORCE TO REQUIRE DRIVER TO

SUBMIT TO BLOOD TEST FOR ALCOHOL OR DRUG TESTING.

D. NO OPTION OF DRIVER TO REFUSE TEST IN THIS LIMITED SITUATION.

E. PUBLIC POLICY - STATE SHOULD HAVE THIS EVIDENCE IN CASE OF DEATH OR SERIOUS INJURY .

F. CONSTITUTIONALITY - CONFORMS W/LAW OF THE LAND - SCHMERBER V CALIFORNIA - U. S. SUPREME COURT CASE.

IV. EVIDENCE:

A. BILL CLOSES LOOPHOLES IN THE LAW THAT ALLOW DRIVERS TO ESCAPE CONVICTION FOR DRUNK DRIVING BECAUSE OF TECHNICALITIES.

V. DUBAL

A. LOWERED TO .08

B. TESTIMONY BEFORE JUDI-CRIM: .08 IS A STATE OF IMPAIRMENT

VI. MANDATORY ADJUDICATION:

A. DUI, DUBAL, DWI CASES

1. COURT SHALL NOT WITHHOLD ADJUDICATION OR SUSPEND SENTENCE.

2. COURT SHALL NOT ACCEPT A PLEA TO LESSER OFFENSE WHICH DOESN'T CARRY MIN. MAND. SENTENCE.

VII. DWI SCHOOLS:

A. REDEFINED "SUBSTANCE ABUSE EDUCATION"

1. SCHOOLS CAN ADDRESS DRUG ABUSE

B. ATTENDANCE MANDATORY FOR ANY DRIVER CONVICTED OF DUI, DUBAL, OR DWI.

VIII. DRIVERS LICENSE EXAMINATION:

A. APPLICANTS TO BE TESTED ON LAWS & DANGERS RELATING TO OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCES.

IV. TECHNICAL ADMENDMENTS

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HOUSE SUMMARY

Creates chapter 885, F.S., the "Impaired Driving Act of 1982." Amends various provisions of state law concerning driving while intoxicated to include driving while under the influence of controlled substances. Provides increased penalties for violations and places the penalties for driving while under the influence in one section of the statutes. Provides for required attendance in substance abuse courses upon order of the court. Provides separate penalties for persons convicted of a violation with a blood alcohol content of 0.15 percent. Provides for urine tests for the purpose of determining whether or not controlled substances are present in the same manner as blood tests are currently required. Provides that tests be made incidental to a lawful arrest with reasonable cause. Provides for license suspension upon refusal to take a required test. Provides that evidence of refusal to submit is admissible in a criminal proceeding and provides for a prearrest breath test which is not admissible. Directs the Department of Health and Rehabilitative Services to provide approved tests. Provides for the giving of tests to persons who are unconscious or otherwise mentally or physically unable to consent. Includes paramedics within a list of persons who may withdraw blood for a test. Limits liability with respect to persons giving tests or withdrawing specimens. Authorizes law enforcement officers to use reasonable force to require compliance, and where force is used and criminal charges arise, provides for concurrent trials. Directs the Department of Health and Rehabilitative Services to approve, by rule, satisfactory test methods and procedures. Prohibits the issuance of driver's licenses to persons with a previous manslaughter conviction or four or more DWI convictions. Provides more stringent suspension periods for conviction. Provides that the results of breath, blood and urine tests shall not be confidential.

See bill for details.