

STORAGE NAME: h0503a.ft

DATE: April 16, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: HB 503

RELATING TO: DUI/Substance Abuse Education Course

SPONSOR(S): Representatives Russell, Murman, Fasano, and others

COMPANION BILL(S): CS/SB 1056(c), HB 593(c), and CS/SB 1306(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) TRANSPORTATION YEAS 9 NAYS 0
- (2) JUDICIARY YEAS 9 NAYS 0
- (3) FINANCE AND TAXATION YEAS 14 NAYS 0
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

I. SUMMARY:

The bill contains numerous changes to laws relating to "Driving under the Influence" (DUI) programs administered by the Department of Highway Safety and Motor Vehicles (DHS&MV or department). Substantive issues included in the bill relate to completion of DUI education, evaluation and treatment and the DUI licensure process.

Completion of DUI Education, Evaluation, and Treatment

The bill amends four statutes pertaining to DUI offenses to provide uniform requirements for persons who are evaluated and referred for treatment. If a DUI offender is referred for treatment, that treatment may not be waived unless an independent evaluation conducted by an authorized substance abuse treatment provider shows that treatment is not needed and the court concurs. If a DUI offender fails to report for or complete the DUI education course, evaluation, or treatment (if referred), the offender's driving privilege is canceled. A DUI offender's driving privilege may be reinstated if the offender completes the DUI education course and evaluation, and enters treatment (if referred). If a DUI offender fails to complete treatment a second time, the offender's driving privilege is canceled and cannot be reinstated until treatment is completed.

DUI Program Licensure Process

The bill changes the DUI Program licensure process to provide criteria for licensure of new DUI programs.

Applicants will be required to:

- be able to demonstrate short and long term financial feasibility,
- demonstrate how their program would improve access to and the quality of services to DUI offenders, and
- follow through on all services reflected in the application.

The bill also includes a uniform application fee in an amount sufficient to cover the Department's administrative costs in processing the application.

The Department indicated that it will need one full time staff position to implement the bill's provisions, which will have an impact of approximately \$70,000 on the DUI School Coordination Trust Fund.

[See amendment section for changes to the bill]

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

DUI Programs

Florida Statutes require that a DUI course be taken by anyone driving a vehicle while under the influence of alcoholic beverages or any substances controlled under ss. 877.111 F.S. and Ch. 893, F.S. in violation of s. 316.193, F.S. The course is also required for anyone driving with an unlawful blood or breath alcohol level or refusing to submit to lawful breath, blood or urine tests as provided in s. 322.2615, F.S. Finally, the court must direct a person to complete a substance abuse course if it has reasonable cause to believe that the use of alcohol, chemical substances, or substances controlled under chapter 893, F.S., contributed to a violation of reckless driving.

DUI programs provide state mandated education courses for DUI offenders that are designed to change the offenders' behavior. DUI programs also evaluate offenders to determine if treatment is needed. Substance abuse treatment, if needed, is provided by an authorized treatment provider. Treatment programs are regulated by the Department of Children and Family Services according to the provisions of chapter 397, F.S. DUI programs themselves do not provide treatment, except in a few areas and only with the department's permission.

DUI courses are conducted on two levels. Level I is for first-time offenders convicted of driving while under the influence of drugs and/or alcohol and consists of a 12-hour education intervention with an evaluation to see if treatment is required. Level II is for second and subsequent convictions of driving under the influence. This course consists of a 21-hour education intervention also with an evaluation to see if treatment is required. Approximately 43,671 students receive education annually.

There are currently 29 licensed DUI programs in Florida. DUI programs must be either governmental programs or not-for-profit corporations and are licensed by DHS&MV to serve specific judicial circuits, or counties within a circuit. Several DUI programs are licensed to serve more than one circuit, and there are four circuits in which multiple DUI programs have been approved (Dade, Broward, Palm Beach and Flagler counties).

Referral to Treatment

The education, evaluation and treatment of DUI offenders is addressed in four different sections in the statutes: ss. 316.192(4), 316.193(5), 322.271(2), and 322.291, F.S. Section 316.193, F.S., requires that DUI offenders attend a mandatory substance abuse education course conducted by a licensed DUI program, be evaluated for substance abuse treatment, and complete treatment if referred. However, the other statutes dealing with DUI offenders are not as specific about completion of treatment. As a result, DUI offenders are not always required to complete substance abuse treatment before their driving privilege is reinstated. The law requires that all persons who enroll in a DUI program be evaluated and referred for substance abuse treatment if treatment is needed.

The Florida Association of DUI Programs, Inc., indicated that this has led to confusion and controversy between DUI programs, treatment providers, offenders, their family members, and lawyers. The offenders question why they must undergo the time and expense of an evaluation when completion of treatment will not be required.

DUI Program Licensure

The Florida Association of DUI Programs, Inc., also indicated that the current statute governing licensure of DUI programs contains no criteria for the licensure of new DUI programs. The Association pointed out that the number of DUI offenders in Florida has not significantly changed in the past few years and the only way a newly licensed DUI program can become viable is by serving the existing offender base. The licensure of multiple programs in the same area results in additional administrative costs being spread over the same population of offenders, causing reductions in program services. The Association further indicated that there is no mechanism in the current law for evaluating the need for new DUI programs or for identifying the impacts that a new program will have on existing program services.

DHS&MV licenses and regulates all DUI programs, including the certification of instructors, evaluators, clinical supervisors, and evaluator supervisors pursuant to s. 322.292, F.S., and ch. 15A-10, F.A.C. After consultation with the chief judge of the affected judicial circuit, the department is required to establish requirements regarding the number of programs to be offered within a judicial circuit. The requirements must address the number of clients currently served in the circuit as well as improvements in service that may be derived from having an additional DUI program. DHS&MV is responsible for establishing uniform operating standards for DUI programs and methods used for setting and approving fees.

Factors the department considers when evaluating an application for approval of a DUI program include:

- the increased frequency of classes and availability of locations of services offered by the applicant DUI program;
- the number of DUI clients currently served and historical trends in the number of clients served in the circuit;
- the availability, accessibility, and service history of any existing DUI program services;
- the applicant DUI program's service history;
- the availability of resources, including personnel, demonstrated management capability, and capital and operating expenditures of the applicant DUI program; and
- improved services to minority and special needs clients.

The DHS&MV does not charge an application fee for a DUI program license. While reviewing an applicant for licensure, the department also does not conduct an analysis to determine what economic impact a new DUI program will have on other programs in the surrounding areas.

B. EFFECT OF PROPOSED CHANGES:

The bill contains numerous changes to provisions of law relating to DUI programs administered by DHS&MV. Substantive issues included in the bill relate to completion of DUI education, evaluation, treatment, and the DUI licensure process. In addition, many of the bill's provisions provide consistency in the requirements for DUI offenses.

Completion of DUI Education, Evaluation, and Treatment

The bill amends the four sections in the statutes pertaining to DUI offenses to require the following provisions:

- A person must attend treatment if they are referred based on an evaluation.
- If a DUI offender is referred for treatment, such treatment may not be waived unless an independent evaluation conducted by an authorized substance abuse treatment provider shows that treatment is not needed and the court agrees.
- If a DUI offender fails to report to or complete the DUI education course, evaluation or treatment (if referred), the offender's driving privilege is canceled.
- A DUI offender's driving privilege may be reinstated if the offender completes the DUI education course and evaluation and enters treatment (if referred).
- If a DUI offender fails to complete treatment a second time, the offender's driving privilege is canceled and cannot be reinstated until treatment is completed.

DUI Program Licensure Process

The bill amends s. 322.292, F.S., to make changes to the DUI Program licensure process. It provides criteria for DHS&MV to use when evaluating the need for additional DUI programs, including:

- the availability, quality of services, accessibility, and adequacy of currently licensed providers;
- the ability of the applicant to provide quality DUI program services and the applicant's record of providing DUI services in other areas of the state;
- the availability of resources, including appropriately trained and certified personnel employed by or under contract with the applicant, and adequate applicant funds for capital and operating expenses;
- the applicant's ability to offer higher quality, more frequent or more accessible DUI program services, and the applicant's ability to offer improved services to persons with special needs;
- the immediate and long-term financial feasibility of the applicant; and
- the probable impact of an additional licensed DUI program on other currently licensed DUI programs serving the same geographic area in terms of the availability, quality, accessibility, and adequacy of existing DUI program services.

The bill also requires uniform application fee in an amount sufficient to cover the department's administrative costs in processing the application. The application fee would not apply to programs seeking licensure to serve an area not currently served by a DUI program. DHS&MV would also be required to revoke the license of any DUI program that does not provide the services reflected in its application.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill grants the Department of Highway Safety and Motor Vehicles the authority to promulgate rules for the administration of DUI programs.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

DUI offenders must attend treatment, if referred, unless an independent evaluation shows that treatment is not needed and the court agrees.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The bill does not eliminate or reduce an agency or program.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

The bill authorizes DHS&MV to assess a uniform application fee. The fee must be sufficient to cover the department's administrative costs of processing and evaluating DUI program license applications. The application fee would not apply to programs that apply for licensure in an area that currently does not have a licensed DUI program or when the currently licensed program has relinquished its license.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Licensure applicants would pay an application fee sufficient to cover the department's administrative costs of processing and evaluating DUI program license applications. However, the fee will not apply to programs that apply for licensure in an area that currently does not have a licensed DUI program or when the currently licensed program has relinquished its license.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill mandates certain DUI program participation as well as participation in a psychological evaluation at the offender's expense. The bill also ties waiver of the referral to any substance to a second independent psychosocial evaluation at the offender's expense. While the evaluations are to be reviewed by the court, this requirement may interfere with the offender's due process rights.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

The bill does not create or change a program providing services to families or children.

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 316.192, 316.193, 322.271, 322.291, 322.292, F.S.

E. SECTION-BY-SECTION ANALYSIS:

[Note: the Section-by-Section analysis below reflects the provisions in the “Strike Everything” amendment adopted in the Transportation Committee rather than in the original bill]

Section 1 amends s. 316.192, F.S., to require the court to direct persons convicted of reckless driving and who are believed to have been under the influence of alcohol or chemical substances to complete a DUI program substance abuse education course and evaluation. The bill provides for enforcement of referrals for treatment and provides for temporary reinstatement of a person’s driving privilege if the person is participating in treatment, has completed the DUI education course, and the evaluation requirement.

This section also has the following provisions:

- A referral to treatment resulting from a DUI program evaluation may not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider appointed by the court.
- If a person fails to report for or complete a DUI program substance abuse education course, evaluation, or treatment, the department shall cancel the person’s driving privilege.
- The department may reinstate the driving privilege upon verification from the DUI program that the education, evaluation, and treatment are completed.

Section 2 amends s. 316.193, F.S., to provide for the following requirements:

- Persons convicted of a DUI shall complete a substance abuse course conducted by a DUI program licensed by the department which must include a psychosocial evaluation of the offender.
- A waiver of a referral to treatment may not be waived absent a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider appointed by the court.
- The court shall review both the independent evaluation and the DUI program evaluation before determining a request for waiver and requires the offender to bear the full cost of the procedure.

The bill also has the following provisions:

- If the DUI program refers the offender to a substance abuse treatment provider in addition to any sentence or fine imposed, then completion of all such education, evaluation, and treatment is a condition of reporting probation.
- If a person fails to report to or complete a DUI program substance abuse education course, evaluation, or treatment, the department shall cancel the person’s driving privilege.
- The department may reinstate the driving privilege upon verification from the DUI program that the education, evaluation, and treatment are completed.
- If the DUI program informs the court of an offender’s second failure to complete treatment, the department shall reinstate that person’s driving privilege only on notice of completion of the DUI program.

Finally, this section provides for the temporary reinstatement of a person’s driving privilege if the person is participating in treatment and has completed the DUI education course and evaluation requirement.

Section 3 amends s. 322.271, F.S., to require proof of completion of an approved driver training course or DUI program substance abuse education course and evaluation for determination by the department of whether the offender should be permitted to operate a motor vehicle on a restricted basis. It requires the department to cancel an offender’s drivers license if the offender has failed to complete a drivers education course or DUI program substance abuse education course and evaluation within 90 days of reinstatement. The bill also provides for temporary reinstatement of a person’s driving privilege if the person has re-entered treatment, is currently participating in treatment,

has completed the DUI education course and evaluation requirement. Finally, the bill provides that if the DUI program informs the court of an offender's second failure to complete treatment, the department shall reinstate that person's driving privilege only on notice of completion of the DUI program.

Section 4 amends s. 322.291, F.S., to clarify grounds for automatic referral of an offender to a driver improvement course or a DUI program. It adds blood-alcohol level and the suspension of license for violation of s. 316.193(1) to these grounds. The bill requires covered offenders to take a driver improvement course or a DUI program substance abuse course along with a psychosocial evaluation and treatment if the offender is referred. The bill also provides penalties for failure to complete treatment.

Section 5 amends s. 322.292, F.S. to grant the Department of Highway Safety and Motor Vehicles rulemaking authority with respect to the administration and financial management of DUI programs, including the licensing of such programs. The bill also provides for a DUI program license application fee of up to \$1,000.

Section 6 provides that the bill will be effective on becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Expenditures</u>	<u>1999-00</u>	<u>2000-01</u>
DUI School Coordination Trust Fund	\$15,201	\$0

This provides for the non-recurring expenditures for one professional position. Also reflected is 80 hours of contracted programming modifications at \$125 per hour to modify the Driver License Software System.

2. Recurring Effects:

<u>Expenditures</u>	<u>1999-00</u>	<u>2000-01</u>
DUI School Coordination Trust Fund	\$54,779	\$54,779

The department indicated that it will need one full time staff position to implement the bill's provisions.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

<u>Expenditures</u>	<u>1999-00</u>	<u>2000-01</u>
DUI School Coordination Trust Fund	\$69,980	\$54,779

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

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2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

The bill authorizes DHS&MV to assess a uniform application fee. The fee must be set at an amount sufficient to cover the Department's administrative costs of processing and evaluating DUI program license applications.

Certain persons may incur additional treatment costs to the extent that the bill encourages more referrals for treatment as a result of the required psychosocial evaluation.

2. Direct Private Sector Benefits:

N/A

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

N/A

D. **FISCAL COMMENTS:**

None.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill does not reduce the revenue raising authority of a city or county.

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

The bill does not affect the amount of state tax shared with a city or county.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 1999, the Committee on Transportation adopted one main "strike everything" amendment to HB 503 and one amendment to the main amendment. The main amendment conformed the bill to its Senate companion. Differences include:

- 1) removing a provision that would have authorized DHS&MV rather than the court to waive an offender's treatment after reviewing the two evaluations;

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- 2) providing additional requirements that applicants for DUI Program licensure must meet;
- 3) providing that the application fee shall not exceed \$1,000; and
- 4) changing the effective date from October 1, 1999, to "upon becoming a law."

Please see the Section-by Section analysis for details.

On April 5, 1999, the Committee on Judiciary adopted one amendment, which is traveling with the bill. The amendment removes language requiring the chief circuit judge to approve a DUI program.

On April 16, 1999, The Committee on Finance and Taxation adopted two amendments to the main amendment:

- 1) It makes clear that the Department of Highway Safety and Motor Vehicles will apply a number of criteria when considering an application for approval of a DUI program. A list of criteria is enumerated.
- 2) It deletes the requirement that the clerk send a second notice of impoundment or immobilization of a vehicle to the registered owner. Since it is difficult for the clerk to determine when a vehicle or vessel will actually be impounded, it is difficult to determine the 2nd notice should be sent.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Thomas E. Duncan

Staff Director:

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AS REVISED BY THE COMMITTEE ON JUDICIARY:

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AS FURTHER REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

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