

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2430

SPONSOR: Criminal Justice Committee and Senator Saunders

SUBJECT: DUI/BUI Urine Tests

DATE: April 15, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 2430 separates the urine testing provisions in the implied consent law for driving under the influence of alcohol or drugs while impaired (DUI-- s. 316.1932, F.S.) and boating under the influence of alcohol or drugs while impaired (BUI-- s. 327.352, F.S.) from the provisions relating to breath and blood tests to detect the alcoholic content of the blood or breath. The urine testing provisions will be in a new subsection of each statute.

Moving the urine testing provisions from the breath and blood provisions that must be approved by the Florida Department of Law Enforcement (FDLE) should clarify the Legislature's intent that urine tests do not have to be "approved" by FDLE through administrative rule (contrary to a recent holding by the Second District Court of Appeal in which it construed the statute as requiring approval by FDLE for urine tests). Instead, the current rules of evidence governing the admissibility of scientific evidence will continue to be in place. Additionally, urine tests will still have to be administered in a reasonable manner ensuring the accuracy of the specimen and maintaining the privacy of the suspect.

This CS substantially amends the following sections of the Florida Statutes: 316.1932 and 327.352.

## II. Present Situation:

Sections 316.1932 and 327.352, F.S., provide any person who accepts the privilege extended by the laws of Florida of operating a motor vehicle (s. 316.1932, F.S.) or a vessel (s. 327.352, F.S.) in this state, is deemed to have given his or her consent to submit to an approved chemical or physical test including, but not limited to, certain tests to detect the presence of alcohol, and a

urine test for the purpose of detecting the presence of certain chemical substances or controlled substances. The urine test must be incidental to a lawful arrest, and must be administered at a detention facility, or any other facility equipped to administer the tests, at the request of a law enforcement officer who has reasonable cause to believe the person tested was driving or was in actual physical control of a motor vehicle or vessel in Florida while under the influence of controlled substances (DUI or BUI).

In a recent Second District Court of Appeal case, the court found that in administering Florida's implied consent law, the FDLE is required to adopt rules in accordance with the Administrative Procedures Act governing the collection, preservation, and analysis of urine samples obtained by law enforcement pursuant to the implied consent law. *State v. Bodden*, 2002 WL 31421575 (Fla. 2nd DCA 2002). In the *Bodden* case, the defendant successfully moved to exclude the results of a urine test because it was taken pursuant to the implied consent law, but had not been approved by FDLE pursuant to the Administrative Procedures Act.

The court construed “*approved* chemical test or physical test including, but not limited to” in s. 316.1932(1)(a)1., F.S., as also applying to “a urine test for the purpose of detecting the presence of chemical substances...or controlled substances.” *Id.* As a result of the *Bodden* decision, DUI convictions in the second district and elsewhere based on a urine test administered under the implied consent law may now be subject to challenge and reversal. (The court has recently certified the question to the Florida Supreme Court.)

In addition, although s. 316.1932(1)(a)1., F.S., states the urine test may be administered for the purpose of detecting the presence of either specified chemical substances or controlled substances, in another place in this same statute it appears to authorize the testing only in cases where a law enforcement officer has reasonable cause to believe the suspect was driving or was in actual physical control of a motor vehicle while under the influence of *controlled substances*. The statute is silent as to whether the officer may order the urine test upon a reasonable belief the suspect was driving under the influence of specified *chemical substances*.

### **III. Effect of Proposed Changes:**

Committee Substitute for Senate Bill 2430 separates the urine testing provisions in the implied consent law for DUI (s. 316.1932, F.S.) and BUI (s. 327.352, F.S.) from the provisions relating to breath and blood tests to detect the alcoholic content of the blood or breath. The urine testing provisions will be in a new subsection of the statute. Moving the urine testing provisions from the breath and blood provisions that must be approved by FDLE should clarify the Legislature's intent urine tests do not have to be “approved” by FDLE through administrative rule. Instead, the current rules of evidence governing the admissibility of scientific evidence will continue to be in place. Additionally, urine tests will still have to be administered in a reasonable manner ensuring the accuracy of the specimen and maintaining the privacy of the suspect.

The CS will also clarify an officer may order a urine test upon a reasonable belief the suspect was driving a vehicle or vessel under the influence of chemical substances or controlled substances.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.