

STATE OF TENNESSEE

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July 26, 2004

Opinion No. 04-122

Judge's Authority to Order a DUI Offender to Attend an Exclusive State-Certified DUI School

QUESTIONS

1. If a county government has authorized the sheriff to enter into a contract with a state-certified DUI school to provide the mandatory schooling required by Tenn. Code Ann. §55-10-403, may the probation order of a general sessions judge require a person convicted of driving under the influence to attend the sheriff's school to the exclusion of all other state-certified DUI schools?

2. May a general sessions court judge select, within his or her discretion, a certified DUI school and use such school exclusively to fulfill the requirements of Tenn. Code Ann. § 55-10-403.

OPINIONS

1. Yes. Tenn. Code Ann. § 55-10-403(a)(1) gives a general sessions judge the authority to choose a school in which a DUI offender may participate.

2. Yes. Tenn. Code Ann. § 55-10-403(c) provides that the judge has the discretion to impose any condition of probation which is reasonably related to the offense.

ANALYSIS

Under Tenn. Code Ann. § 55-10-403 (penalties for driving under the influence of an intoxicant), a trial court, as a condition of probation, is required to order an offender to participate in an alcohol and drug safety DUI school, and/or drug offender school program, if available. Tenn. Code Ann. § 55-10-403 (a)(1) and (4)(B)(c). Tenn. Code Ann. § 55-10-403(c) provides:

All persons sentenced under subsection (a) shall, in addition to service of at least the minimum sentence, be required to serve the difference between the time actually served and the maximum sentence on probation. The judge has the discretion to impose any conditions of probation which are reasonably related to the offense, but shall impose the following conditions:

(1) Participation in an alcohol and drug safety DUI school, and/or drug offender

school program, if available; or

(2) Upon the second or subsequent conviction for violating the provisions of § 55-10-401 or § 39-17-418, involving the possession of a controlled substance, participation in a program of rehabilitation at an alcohol or drug treatment facility, if available; and

(3) The payment of restitution to any person suffering physical injury or personal losses as the result of such offense if such person is economically capable of making such restitution.

The legislative intent of a statute must be determined from its plain language and should be construed in accordance with its ordinary meaning. *Dunn v. Hackett*, 833 S.W.2d 78, 81 (Tenn. Crim. App. 1992); *Montgomery v. Hoskins*, 432 S.W.2d 654, 655 (1968); *State v. Rollins*, 785 S.W.2d 129, 131 (Tenn. Crim. App. 1989). Tenn. Code Ann. § 55-10-403(c) specifically provides that the judge has the discretion to impose any conditions of probation which are reasonably related to the offense. The statute does not purport to direct the use of any particular DUI school, but seems to leave the choice up to the sentencing judge. Therefore, it appears that a general sessions judge may order a DUI offender to attend a particular state-certified DUI school to the exclusion of all others as long as the choice is “reasonably related” to the offense.

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