State and National

Highway Patrol urges drug testing for impaired drivers

By ALAN MARTIN Staff Writer

The N.C. Highway Patrol is hoping to join several other state law enforcement agencies in programs of testing obviously impaired drivers for drug use if they do not register a bloodalcohol content on Breathalyzer tests.

The Governor's Highway Safety Commission (GHSC) is closely monitoring pilot programs in other states which are being overseen and funded by the National Highway Traffic Safety Administration, according to Paul Jones at GHSC.

These programs are showing some success but are moving slowly in order aim is to develop the program and avoid having it labeled "voodoo science" as one American Civil Liberties Union official has called the program, he said.

Should the program come to North Carolina, the procedure for drug testing would begin after an officer has stopped a driver for poor driving. If the driver appeares impaired but does not display signs of alcohol consumption, an officer from a specially trained group would be called to the scene, he said.

The special officer would administer several field sobriety tests, note other physical conditions which could indicate drug use and look for nys-

to establish credibility, Jones said. The tagmus, a spasm of the eye when following a slowly moving object, he said. The presence of nystagmus can indicate the use of alcohol or drugs, both legal and illegal, he said.

If all the tests indicate the subject is under the influence of drugs, he or she may be taken before a judge or magistrate where the arresting officer will make a case that probable cause exists to take a blood sample from the driver for testing. The results of this blood test could be used as physical evidence in court, he said.

The nystagmus test is not a reliable measure for illicit drug use, said Susie Wong, a physician at the North Caro-

lina Memorial Hospital Eye Clinic. This is because many people have congenital nystagmus and many medications which do not otherwise impair a driver can cause this disorder, she said.

This fact concerns the North Carolina Civil Liberties Union, said William Simpson, an attorney with the NCCLU. The test is interpretive, according to a release he received from the N.C. Highway Patrol. Interpretive means "art as opposed to science," he said, adding that current technology is not reliable enough to establish probable cause.

If the nystagmus test is used in connection with other tests, such as obser-

vation of pupil dilation and coordina- influence of drugs, Jones said. The law tion, it would prove much more reliable, Wong said.

There would definitely be other considerations besides the eye test, Jones said. These other considerations would be a necessity, since it would be difficult to convince a magistrate to allow a blood test without overwhelming evidence that drug traces would be found, Jones said. The nystagmus test alone would not convince any magistrate, he said.

In most cases, a driver would not be taken before a judge or magistrate unless he or she had been driving very erratically and was obviously under the

enforcement divisions would need to be very careful in order to avoid charging people whose blood tests would prove they were not under the influence of any illegal substance. This would prove very damaging to the respect and validity of the program and set bad legal precedents, Jones said.

There is a great deal of excitement among N.C. law enforcement agencies about the possibility of this program coming to North Carolina, Jones said. No timetable is available for when the program will arrive here. The GHSC would like to bring it here as a pilot program as quickly as possible, he said.

Florida legislature rejects anti-abortion bills in special session

By CHUCK WILLIAMS

Staff Writer The issue of abortion came to the national forefront once again as Florida legislators adjourned yesterday from a

The special session was called by Republican Gov. Bob Martinez, an antiabortionist, after the U.S. Supreme

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encouraged to attend.

special session called to address the Court upheld a Missouri case in July which gives states more authority to govern abortions.

> The session did not result in the passage of any significant legislation. Bills concerning abortion were proposed Tuesday and were immediately sent to the appropriate committees where they died.

Accusations of "playing politics" have come from both parties in the state. Republicans claim Democrats are pandering to perceived voter opinions by not passing the legislation, and Democrats claim the governor proposed the special session knowing nothing

could pass in the short session. "It's become a matter of politics,"

said a spokesman for Gov. Martinez's office.

Martinez proposed several legislative pieces, including bills that would ban the use of public resources for abortions, expand regulations for abortion clinics and require physicians to tell women seeking abortions about the status of the fetus.

"Gov. Martinez did not ask for abolition of abortion, but (for) items that have a 60 to 70 percent approval rating in the polls," said Rep. Paul "Skip" Stam (R-Wake), a leading anti-abortion legislator in North Carolina.

N.C. politicians agree that Gov. Jim Martin will not call a special session to address the abortion issue specifically.

"We don't believe the governor will mittee has the bill and hasn't reported it call a special session," said Tim Kent, executive assistant to Speaker of the House Joe Mayretic. "The assembly will likely deal with the question of funding legality during the 1990 short

Stam said: "The tradition in North Carolina is only to have special sessions for emergencies. We have cases pending that will come out in 1990 that will address abortion."

session."

Although Martin does not feel abortions should be funded by state money, he will not call a special session, said Tim Pittman, spokesman for the governor's office.

"Gov. Martin will certainly not call a special session. This issue will come up in a regular session. The governor's stance is that state funds should not be used for abortions except for rape or incest which is promptly reported, or when the mother's life is threatened by the pregnancy.

"Gov. Martin sees abortion as a tough, complex issue with most people in the middle rather than with extremist views either way."

There are several bills pending that will address the issue in the N.C. General Assembly, Stam said.

"The House has passed a parental consent bill already, which the Senate Judiciary Committee voted for eight to one. The Senate Appropriations Com-

out yet.

"Every session of each house has voted on the issue each year since about 1978. The voting will be different next year because of the displacement of key legislators in our favor."

Stam said he expected some success with the legislation in the next session. "Some of it will pass, but some of it won't."

Debates continue as to the necessity of calling the special Florida session.

"In the past, Florida's legislature has passed more pro-life legislation then we have," Stam said. "Gov. Martinez could have thought they might have been able to do something.

"Also, Claude Pepper's legislative seat was won by a pro-life activist, so he may have thought the voters were electing these people and wanted the issue to come to public light. However, short sessions don't allow you to get overwhelming majorities."

Politicians are unsure of the impact the Florida session will have on state governments around the country. Most feel there will be few, if any, additional sessions called to address the issue.

"There's not too many special sessions called across the nation," Stam said. "It's really hard to get controver-

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sial things passed in a short session." **Embryo custody ruling** leaves legal questions

By EMILIE VAN POUCKE

In an unprecedented custody battle,

a Tennessee woman was awarded temporary custody last month of seven frozen embryos fertilized by her exhusband.

Junior Davis filed the case in an attempt to restrain his wife, Mary Sue, from implanting the embryos.

"He (Mr. Davis) doesn't feel like she (Ms. Davis) should have control over that decision," said Janet Mayfield, a lawyer who will assist Mr. Davis' attorney during the appeal process. "He feels he should not be forced into parenthood and the right to make choices about parenthood applies to both of

Mr. Davis will continue to appeal until he wins the case or until it reaches the Supreme Court, Mayfield said.

Judge Dale Young announced his verdict and released a 57-page opinion

on Sept. 21. "I think the judge went too far in his

ruling," Ray King, a gynecologist at the Fertility Center of Eastern Tennessee

> tical and has not developed an identity." Some fertilization clinics require clients to sign consent agreements before undergoing procedures, so unexpected events - such as divorce or a changed decision by one partner -

> in Maryville, said in a telephone inter-

view. "They are not human beings, they are pre-embryos. Each cell is iden-

will not result in legal disputes. "I do not think they (the Davises) signed an agreement," Mayfield said. "This is why it is an issue."

Although Davis vs. Davis has not set major precedents yet, it may promote wider use of consent agreements.

Young encountered a few constraints when making his decision. The case did not rely upon the legality of previously signed documents by the litigants. Also, precedents related to the issue did not exist and few Tennessee laws address cases of this nature.

The most flexibility in the case resulted from the Supreme Court's decision not to make a ruling about when life begins in their Roe vs. Wade decision, Mayfield said. Consequently, "human life begins at conception," Young said.

"The case (Roe vs. Wade) did not turn' on when life begins," said Kay Bartlett, a professor of law at Duke University. "Judge Young did not have to make a decision of legal profundity."

Young's resolution allowed him to try the case in terms of custody rights, instead of property rights. In this case, custody in favor of Ms. Davis did not give her the right to care for any child produced. Young wrote that if Ms. Davis implants a fertilized cell and it comes to term, final custody, visitation rights and child support would then be de-

"The issue is not custody, but whether the child should be allowed to come into being when it is not in utero," Bartlett said.

If the courts decide life begins at the moment of fertilization, cells produced by in vitro fertilization may be protected. If this occurs, mothers with frozen embryos may be forced to implant every egg at some time.

"Because the court didn't have a decision for (giving frozen embryos the chance to develop) ... this may be one indication of wrong reasoning (by the court)," Bartlett said.

Cryopreservation, the cold storage process for embryos, gradually reduces the temperature of the biological tissue to about -180 degrees. The tissue is preserved so it will not be damaged and biological activity will cease. If the seven embryos are implanted consecutively over a seven-month period, there would be a 52 percent chance for pregnancy, King said.

Ms. Davis' attorney could not be reached for comment.

