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|  | <b>Florida State University Police Department</b> |                      |
| <b>DUI Enforcement &amp; Zero Tolerance/0.02 Violations</b>                       |   |   |
| Revision Effective Date:<br>09/05/17  | <b>General Order 716</b>                          | Attachments: Breath Test Aff., Blood Withdrawal Aff., DUI Packet, Implied Consent Warning, Refusal Form |
| Rescinds/Amends: 22E (6/8/15), 14-22E, 08-200-74                                  | Distribution: Sworn<br>Pages: 11                  | CFA References: 18.02, 18.10  |

**Purpose/Policy**

The purpose of this general order is to establish a consistent and comprehensive policy for the enforcement of laws prohibiting persons from the operation of vehicles while impaired due to alcohol or other chemical substance(s) and guidelines for the enforcement of the Zero Tolerance Law (0.02 Violations).

Enforcement of DUI traffic laws and 0.02 violations is an important duty of law enforcement officers charged with safeguarding the public. Drivers impaired by alcohol or drugs represent a significant threat to public safety. To reduce this threat, a comprehensive DUI enforcement program, including traffic law enforcement, standardized training for officers, certification of equipment and operators for chemical testing, and public education is necessary.

It shall be the policy of the Department to proactively educate members of the community regarding impaired use of vehicles and rigorously enforce the DUI and 0.02 violation statutes of the State of Florida.

**Procedures**

**A. Detection & Investigation**

Detection and investigation of individuals driving or in actual physical control of a vehicle while Under the Influence of alcohol or drugs can be accomplished in several ways. Some or all of the following may be utilized in the detection and investigation of DUI.

1. **Vehicle in Motion.** This is when the driver of a vehicle attracts the officer’s attention. It includes the observation of the vehicle in motion, and the observance of the stopping sequence.
2. **Personal Contact.** This includes the observation and interview of a suspect when the vehicle is not in motion. These observations may include:
  - a. The suspect approaching and entering the vehicle.

- b. Face to face observation and interview of the suspect.
  - c. The suspect's exit from the vehicle.
  - d. The way the suspect walks.
  - e. Other human indicators.
3. **Field Sobriety Exercises.** This includes the explanation, demonstration, and observation of standard field sobriety exercises. These exercises include, but are not limited to:
- a. Horizontal Gaze Nystagmus
  - b. Walk and Turn
  - c. One Leg Stand
4. **Traffic Crash Detection.** This is when an Officer investigating or assisting with a traffic crash observes indications of DUI. Factors which should be noted include:
- a. Physical evidence indicating driving behavior possibly caused by alcohol/drug impairment (e.g. driving on wrong side of road);
  - b. Human indicators of impairment
5. **Sobriety Checkpoints.** The FSU PD utilizes sobriety checkpoints and assists other agencies with their sobriety checkpoints [CFA 18.10.].
- a. Sobriety checkpoints are authorized for use by the Department when implemented for the primary purpose of detecting impaired drivers.
  - b. Enforcement of other infractions or violations detected at sobriety checkpoints is not prohibited if observed by the officer at such a checkpoint.
  - c. Only a supervisor with the rank of at least a Corporal has the authority to implement and/or cancel a sobriety checkpoint.
  - d. A supervisor with the rank of at least a Corporal shall be in charge at the scene of a sobriety checkpoint.
  - e. Staffing needs at each sobriety checkpoint shall be determined during the construction of the sobriety checkpoint operational plan, i.e., before actually effecting the sobriety checkpoint. Staffing needs shall be based upon traffic volume and officer and driver safety considerations. At a minimum, each sobriety checkpoint shall have the following staff:
    - 1) Command Officer with the rank of at least a Corporal;
    - 2) Data Collection Officer (to collect minimal data of each driver stopped, e.g., time of stop, and whether an arrest was made);
    - 3) Line Officers (minimum of two to contact drivers within the driver contact area);
    - 4) Safety Officer (to monitor checkpoint for safety issues and to notify staff of any immediate safety hazard).
  - f. Each sobriety checkpoint shall include an operational plan. Within each operational plan, the following (at a minimum) shall be addressed:
    - 1) Objectives of the sobriety checkpoint;
    - 2) Site selection (specific location of the checkpoint);
    - 3) Placement and types of warning devices and lighting;

- 4) Authorized clothing and equipment (Refer to the General Order titled "Traffic Control");
  - 5) Logistics (a determination of ratio of vehicles to be stopped);
  - 6) Responsibilities of site project officers (a description of the various assignments and responsibilities of each assignment);
  - 7) Communications (radio channel to be utilized);
  - 8) Handling of arrestees and evidence;
  - 9) Impaired driver detection and investigation techniques to be utilized;
  - 10) Post-event procedures; and
  - 11) Inclement weather contingencies.
- g. Prior to the implementation of any sobriety checkpoint, an operational briefing shall be conducted with all personnel assigned to the checkpoint.
  - h. A copy of the operational plan will be provided to anyone assigned to the checkpoint who requests it.
  - i. The Lieutenant for Support Services is authorized to conduct a press release advising the media of the checkpoint.
  - j. The command officer in charge of the sobriety checkpoint operation (or designee) shall prepare an after-action report for Departmental records concerning the checkpoint, its activities, and its results.

## **B. Arrest Procedures**

If the offender is arrested, the following procedures shall apply [CFA 18.02 A]:

1. In all cases, the offender shall be handcuffed immediately following arrest and shall be secured inside a caged vehicle. Particular care should be given to ensure the arrested person's airway does not become obstructed due to severe impairment. When practical, a person should be assigned to observe the arrestee.
2. Communications shall be notified when an arrest is made.
3. The offender's vehicle shall be dealt with in accordance with Department policy as discussed in General Order titled "Traffic Assistance Policy and Vehicle Towing/Impoundment Procedures". With the owner's permission, the vehicle may be released to a friend with a valid driver's license who has not been drinking. With the owner's permission, the vehicle may be left in a legal parking space. If the suspect's vehicle is to be towed, a back-up officer should complete the vehicle report while waiting for the wrecker. If the owner is not able to give consent due to severe impairment, the vehicle should be towed.
4. After testing has been completed, Miranda rights shall be given prior to interrogation.
5. The arresting officer shall be responsible for the completion of all citations, the incident report, and any other required forms.

## **C. Alcohol/Drug Testing Procedures.**

All testing procedures shall be in accordance with Section 11D-8, Rules of the Florida Department of Law Enforcement Implied Consent Program, and Florida Statute 316.1932.

The administration of one type of test does not preclude administration of a subsequent test. Any subsequent test carries the same regulations as the primary test.

For DUI (Alcohol) charges, a breath test as described in section 1 below shall be the primary test offered to offenders; unless circumstances make breath tests impossible or impractical. If the arresting officer suspects other chemical substance involvement, the procedures described in section 2 below should be applied apply.

If the offender refuses to submit to any of the test(s), the offender's driver's license shall be automatically suspended for a period of one (1) year for a first refusal or for eighteen (18) months for a second or subsequent refusal.

The offender to be tested may, at his/her own expense, have a statutorily-authorized individual administer a test of the offender's choosing, in addition to the tests administered by the Department. The offender will be given timely access to a telephone to secure such test. This test does not replace any test requested by the Officer.

## **1. Breath Testing**

- a. Breath tests shall only be administered by certified Breath Test Operators holding a current and valid permit through the Florida Department of Law Enforcement.
- b. Any evidentiary breath test shall be administered on an Intoxilyzer 8000 breath test instrument which meets current standards for testing and inspections.
- c. The Implied Consent warning shall be provided to the offender if the offender refuses to provide a requested test, or if the offender has any questions regarding sanctions.
- d. The Breath Test Operator shall be responsible for conducting the test, to include ensuring that the appropriate observation period is met, in accordance with their training and standards.
- e. The Breath Test Operator shall be responsible for completing all required documentation regarding any breath tests conducted. Any reports generated during the breath test operation should be submitted under the same departmental guidelines as incident reports.
- f. Should the level of impairment be inconsistent with the information provided by the Intoxilyzer 8000, consideration should be given to requesting a certified Drug Recognition Expert for further evaluation.

## **2. Urine (Drug) Testing**

- a. Urine testing is only used for the detection of drugs or other controlled substances (not the level of alcohol content). If the arresting officer suspects impairment due to drugs or other controlled substances, an evidentiary breath test as detailed above shall still be requested if practical.
- b. If a urine sample is to be collected, it should be collected in the I-Cup testing kits. The collection should be supervised by an officer and can be done by a member of the LCJ correctional staff, in the case of an offender of the opposite sex.
- c. If possible, the shift supervisor should be contacted to request a certified Drug Recognition Expert (DRE) to continue the evaluation. This step should be considered whether or not the subject consents to provide a sample.
- d. The I-Cup shall be packaged consistent with the FDLE Evidence Collection and Submission guidelines and placed into refrigerated evidentiary storage.
- e. I-Cup testing kits can be obtained at the Leon County Jail. If I-Cups are unavailable, then any appropriate container may be used.

### 3. Blood Testing

- a. Implied Consent requirements do apply to blood tests collected for evidence. If the subject is unconscious and unable to withdraw consent, consent is presumed under Implied Consent.
- b. An officer may request a blood sample from a suspect for the purpose of testing for alcohol or drug content if the suspect is at a medical facility, and a breath test is impractical or impossible to obtain:
  1. An ambulance qualifies as a medical facility for the purpose of obtaining a blood sample for alcohol or drug content testing.
  2. A blood sample for the purpose of determining alcohol or drug content is only allowed to be taken at an actual medical facility or in an ambulance.
- c. If a driver involved in a crash resulting in a serious bodily injury or death refuses to submit to a breath test and probable cause exists to believe the suspect is impaired from the consumption of alcohol and/or drugs, the officer shall arrange for the suspect's transportation to a medical facility, and obtain a blood sample for chemical testing. If the suspect refuses to submit to a chemical test, then a warrant must be obtained for the collection of the blood sample.

Blood samples should be taken using an approved FDLE legal blood kit, and:

1. The expiration date of the blood vials utilized must not have been reached.
  2. The technician must complete the Certification for Blood Withdrawal, which will be submitted with the case file until charges are issued.
  3. If an Implied Consent Form is completed, it will include the Department case number and will be submitted with the case file.
  4. The blood vial must be marked with the name of the person tested, the date and time the sample was collected, and the initials of the collector.
  5. The suspect's skin must be cleaned only with a non-alcoholic antiseptic solution prior to receipt of the blood sample.
  6. The officer must witness the withdrawal of the blood from the suspect.
  7. The blood vials containing the blood sample must be inverted by the receiving officer several times to insure the vials' sodium fluoride (anticoagulant) is mixed.
  8. The blood/blood vials must not be exposed to extreme heat.
  9. The officer must ensure the following:
    - a) The blood vials are sealed and placed in a protective container.
    - b) The blood vials are impounded/refrigerated in the Department's Property and Evidence Unit.
    - c) An appropriately completed Property and Evidence Receipt accompanies the blood vials.
- d. An officer who responds to a hospital to investigate a DUI may obtain the results of any medical blood test from the appropriate hospital personnel for the purpose of establishing probable cause to request a legal blood withdrawal.
  - e. When blood is drawn for a DUI case, an arrest should normally be delayed until the

result of the blood test is received. If circumstances require charges be made prior to receipt of the test result (e.g., the suspect has been released from the hospital and intends on departing the jurisdiction of the court) and probable cause exists, an immediate arrest may be made.

- f. When the results of a blood test returned to the Department indicate the suspect was impaired to the extent their normal faculties were affected, or the suspect had an alcohol level of at least .08 grams alcohol per 100 milliliters of blood, the Officer or an Investigator should request the court issue a summons or warrant for the arrest of the DUI suspect.

**D. Driver's License Seizure/Suspension.** Section 322.2615.F.S., provides for the seizure and suspension of an arrestee's driver's license by the arresting officer for DUI under certain situations.

1. Officers shall seize and suspend a suspect's driver's license when the suspect was driving or in actual physical control of a motor vehicle and one of the following applies:
  - a. The offender has a breath alcohol level of .08 g/210L or higher.
  - b. The offender has a blood alcohol level of .08 g/100ml or higher.
  - c. The offender refuses to submit to a blood/breath/urine test.
2. If any of the above applies, a Florida DUI Citation shall be completed. If the arrestee has a valid driver's license which is not suspended or revoked, their copy of the citation serves as ten day temporary driving permit. If the arrestee does not have a valid driver's license or their license is currently suspended or revoked, the Officer shall indicate on the citation that the offender is not eligible for the ten day temporary driving permit.
3. In situations where blood is taken for testing purposes, the drivers' license may be suspended at a later date, after receiving test results indicating a level of .08% g/100mL BAC or higher.
4. Driver's licenses seized pursuant to this section shall be returned to the FSUPD Records Section for submission to DHSMV.

**E. Breath Testing and Booking Procedures for Juvenile DUI suspects.**

Special breath testing and booking procedures are required for juvenile DUI suspects. These procedures do not affect blood and urine testing, or their ability to obtain an independent blood test.

1. When a DUI arrestee is under 18 years of age and a breath test is requested, it should be administered at the scene of the investigation using an approved evidentiary breath instrument.
2. If an evidentiary breath test instrument is unavailable, the officer shall transport the juvenile to the Leon County Detention Facility for administration of the breath test, and adhere to the following protocols:
  - a. The officer must notify the intake supervisor prior to entering the facility, informing the supervisor a juvenile is being brought there for breath testing.
  - b. The juvenile, regardless of gender, shall be escorted through the female intake area, and be delivered directly to the breath test room.

3. After the breath test portion of the DUI investigation is completed, the officer is responsible for ensuring the following medical clearance and booking protocols are adhered to:
  - a. The juvenile is transported to a medical facility and evaluated by a physician.
  - b. A written medical clearance is obtained from attending physician.
  - c. After being examined by a physician and a medical clearance obtained, the juvenile is transported to the JAC.
  - d. The medical clearance is provided to the JAC in-take officer at the time of processing
  - e. An officer remains in contact with the juvenile until delivered to the JAC.
4. Officers are not authorized to release a juvenile DUI arrestee from custody. The Officer must deliver the juvenile to the JAC so their staff can complete booking, parent/guardian contact, detention criteria assessment, and any post-booking transportation.

F. **Violation of 322.2616, F.S. (.02 Law).** Section 322.2616, F.S. (.02Law) applies to individuals under the age of 21 who are driving or are in actual physical control of a motor vehicle and have a blood-alcohol or breath-alcohol level of 0.02 or higher. A lawful contact must be made before an individual under the age of 21 can be detained and investigated for a violation of Section 322.2616, F.S. (.02 Law).

Before Checking the suspect for a Violation of 322.2616, F.S. (.02 Law), the officer should conduct a DUI investigation to determine if probable cause exists for a DUI case under 316.193, F.S. If DUI is ruled out but there is probable cause the suspect is under the influence of an alcoholic beverage and was driving or in actual physical control of a motor vehicle, the following procedures should be used:

1. An officer will observe the suspect for a minimum of 20 minutes. The 20-minute observation period is conducted to ensure the suspect does not introduce anything into his/her mouth. The suspect is not allowed to chew gum, smoke, drink, or eat anything. If the suspect vomits, regurgitates or introduces anything into his/her mouth, the 20 minute observation period must be started over.
2. After the suspect has been observed for a minimum of 20 minutes, only an Officer who has been trained as a Portable Breath Test Device (PBT) Operator should operate and obtain breath samples using an approved PBT. The officer will follow the established manufacturer and Departmental procedures for collecting breath samples. This includes proper handling of the breath sample mouthpiece.
3. The plastic wrapper for the Portable Breath Test Device mouthpieces should be opened at the end closest to the side arm and the tube placed on the Portable Breath Test Device with the side arm properly positioned in the sample port. The plastic wrapper should remain on the mouthpiece until the driver is given the mouthpiece to give the breath sample. Do not allow the driver to blow through the breath sample mouthpiece directly onto you or another officer.
4. Two breath samples should normally be obtained. Prior to taking the second sample, the PBT operator should record the date, time, result and test number on the PBT operators personal log sheet.
5. A new mouthpiece should be placed on the Portable Breath Test Device prior to the second

breath sample. The same procedures for safe handling should be followed as listed above. The date, time, result, and test number should be recorded by the officer on the PBT operators personal log sheet.

6. If the two (2) breath samples yield breath alcohol levels of 0.02 or higher, the officer will take the suspect's driver's license and issue a Notice of Suspension using forms and instructions provided by the Department of Highway Safety and Motor Vehicles. An inked thumbprint will be taken by the officer and placed on the Notice of Suspension white copy if the driver does not have their driver's license in his/her possession. This will be in addition to any other required prints, such as on Uniform Traffic Citations.
7. If the suspect refuses to give a breath sample, the officer will read the implied consent warning to the suspect (*NOTE: THIS IS NOT THE SAME AS THE IMPLIED CONSENT FOR DUI. READ THIS OFF OF THE NOTICE OF SUSPENSION FORM*). If the suspect continues to refuse, the officer will take the driver's license and issue a Notice of Suspension using the forms and instructions provided by the Department of Highway Safety and Motor Vehicles.
8. If the suspect gives one valid breath sample and then refuses to give a second sample, the officer will treat this as a refusal. The results of the first sample can be used at any driver's license hearing.
9. If the first breath sample provided by a suspect is under 0.02, a second breath sample should be obtained to confirm the results.
10. If there is no arrest for another violation, the suspect is age 18-20, and the suspect blew at least 0.02, the following may be used for releasing the suspect after suspending their driver's license:
  - a. The suspect can be released and advised not to drive after reasonable steps are taken to ensure the safety of the individual;
  - b. If the suspect lives within a reasonable distance of Florida State University and the vehicle is in an area which will not impede traffic, such as a legal parking space, the suspect can be driven home by the officer if approved by a supervisor. If the vehicle is not legally parked or will impede traffic, the vehicle should be towed as per Department procedures for safe keeping as discussed in the General Order titled "Traffic Assistance Policy and Vehicle Towing/Impoundment Procedures"
  - c. If contact can be made with a roommate or friend who has not been drinking, has a valid driver's license, and is willing to come take the suspect home, the suspect can be released to the custody of such person. If the suspect's vehicle is not legally parked or will impede traffic, it should be towed as per Department procedures for safe keeping of the vehicle as discussed in the General Order titled "Traffic Assistance Policy and Vehicle Towing/Impoundment Procedures".
  - d. If the driver is under age 18, then a parent or legal guardian must be contacted to take custody of the suspect. In the case of a juvenile Florida State University student whose parent or legal guardian either cannot be reached or does not live within a reasonable distance of the Florida State University campus, then refer to Section 10b, above.
11. Since the probable cause for the DUI arrest has already been eliminated, if the two (2) breath samples yield a breath alcohol level in excess of 0.08, an arrest should not be made under Section 316.193, F.S. A Notice of Suspension under Section 322.2616, F.S., should be issued.

12. Documentation requirements:

- a. Fill out and issue *Notice of Suspension* provided by the Department of Highway Safety and Motor Vehicles, if applicable.
- b. Complete Affidavit of Refusal to Submit to Breath Test, if applicable.
- c. Complete PBT Breath Test Affidavit, if applicable.
- d. Complete personal log of breath test conducted.
- e. Submit the driver license to the FSUPD Records Section for return to DSHMV, if applicable.
- f. Complete Department incident report forms, if applicable.
- g. All required forms must be submitted to the Department of Highway Safety and Motor Vehicles within five (5) calendar days. All of the applicable forms and incident report forms shall be forwarded, via regular report review procedures, to the Records Section for mailing/delivery to the Hearing Office of the Department of Highway Safety and Motor Vehicles

G. **Portable Breath Testing Devices.** The following procedures shall be followed by all Department personnel:

1. **Approved PBT** - Only approved Portable Breath Test Device which appear on the U.S. Department of Transportation's Conforming Products List of Evidential Breath Measurement Devices are to be used at the FSU Police Department.

2. **Security and forms**

- a. Portable breath testing devices and Notice of Suspensions forms will be secured in the Patrol Supervisor's closet located in the patrol check-on room. A copy of the manufacturer's procedure manual/notebook shall be kept with each PBTs or with the Agency Inspector.

If additional forms are needed, the records section shall be advised within a reasonable amount of time to ensure that an adequate supply will be available at all times.

Keys to the closet will be kept on the Shift Supervisor's key ring, and in the Communications Section.

3. **Routine Care of PBT.** The Departmental Agency Inspector will be responsible for the following:

- a. Calibration of PBTs a minimum of twice annually.
- b. Maintaining an accurate service log on PBTs.
- c. Performing other serviceable procedures as defined by the manufacturer.
- d. The service and calibration of PBTs may be performed by the designated Agency Inspector of another agency.
- e. If an error message appears on the readout of the Portable Breath Test Device, a notice should be sent to the Agency Inspector and the device shall be taken out of service.

4. **PBT Operator Training.** Department officers will attend training on the PBT. The training will be conducted by Department personnel trained in the PBT device course provided given by the manufacturer. This training will include:

- a. How the device works.
  - b. How to take care of the device.
  - c. How to properly conduct the breath test according to the manufacturer's recommended procedures.
  - d. How to keep a personal log of breath tests administered under the provisions of Section 322.2616, F.S. (.02 Law).
  - e. How to properly dispose of potential bio-hazardous materials, i.e., the individual mouthpieces.
  - f. The officer shall be able to demonstrate proficiency in operating the PBTs at the conclusion of the training. If the officer is unable to demonstrate proficient operation of the PBT device, the officer shall not be allowed to operate the PBT until such time that proficient operation can be demonstrated by the officer.
5. **Printout.** The CMI Intoxilyzer 400 has a covered computer port on its side. This cover should be kept intact at all times. This port allows the stored (up to 100) PBT results to be downloaded into a computer program. A printout can then be made of all of the results. The printout from the computer program will be done on a request only basis.

**Glossary:**

**BAC** - Blood Alcohol Concentration

**DUI** - Driving Under the Influence

**FDLE** - Florida Department of Law Enforcement

**Vehicle** – Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

**Human Indicators** - These are those characteristics exhibited by an individual that may lead to a belief that the individual is under the influence of alcohol or drugs. They include, but are not limited to those things an officer might see, hear, or smell.

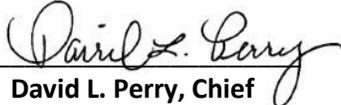
**SFST** - Standard Field Sobriety Tests

**Indexing:**

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Refusal to Submit  
Traffic  
Underage Drinking  
Unlawful Blood - Alcohol  
*Zero Tolerance Law/0.02 Law*

**Attachments:**

Breath Alcohol Test Affidavit (FDLE/ATP Form 38)  
Certification of Blood Withdrawal (FDLE/ATP Form 11)  
DUI Work Packet  
Implied Consent Warning  
Refusal to Submit to Breath/Urine/Blood Test (DHSMV Form 78054)

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| MTC 08/31/17    Filed: 716   |
| DUI Enforcement & Zero Tolerance/0.02 Law  |
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| Date: <u>08/31/17</u>  |