

PALM BEACH GARDENS POLICE DEPARTMENT		
DUI ENFORCEMENT		
POLICY AND PROCEDURE 4.2.3.10		
Effective Date : 10/01/13	Accreditation Standards: CALEA 61.01.10, 61.01.11 CFA 22.07M	Review Date: 07/01/2014

CONTENTS

- 1. Introduction**
- 2. Detection and Reinforcement Phase**
- 3. Investigation and Screening**
- 4. Under Age 21 Driving with BAC 0.02 or Higher**
- 5. Chemical and/or Physical Test Administration**
- 6. Booking and Administrative Work**
- 7. Sobriety and Safety Checkpoints**
- 8. Glossary**

PURPOSE: To establish guidelines and procedures for handling persons charged with driving under the influence (DUI) of alcoholic beverages or controlled substances.

SCOPE: This policy and procedure applies to all officers.

REVIEW RESPONSIBILITY: Patrol Operations Bureau Major

POLICY: When handling suspected DUI drivers or persons under the influence of controlled substances, this department will offer and administer chemical and/or physical tests, consistent with rules and regulations as set forth by the State of Florida and local guidelines established for prosecution by the state attorney's office. The officer must decide whether or not there is sufficient cause to stop the vehicle, whether to conduct further investigation to determine if the suspect may be impaired, or for other traffic violations. The officer is not committed to arresting the suspect for DUI based on his/her initial observation, but should concentrate on gathering all relevant evidence that may suggest impairment. The problem of DUI is of an extremely serious nature. In an attempt to standardize testing of suspected DUI drivers, certain procedures have been established and are to be followed by the arresting officer.

PROCEDURES:

1. INTRODUCTION

- a. Driving while under the influence (DUI) of alcoholic beverages or controlled substance violations fall under two categories:
 - i. Violations that are observed or witnessed by the officer while on patrol; and
 - ii. Violations that are observed during the course of a crash investigation.
- b. While the DUI case building process for each of these is the same, the arrest process will differ during each phase.
 - i. As a suggested alternative, officers may read the suspect(s) their Constitutional Rights at the beginning of the DUI crash investigation.
- c. each DUI case is broken down into the following steps:
 - i. Detection and reinforcement.

- ii. Investigation and screening.
- iii. Arrest.
- iv. Chemical and/or physical test administration.
- v. Booking and administrative work.

2. DETECTION AND ENFORCEMENT PHASE

- a. Observed Violations -The officer while on patrol who observes a driver will note several indicators of impairment. These clues will vary and include both vehicular and human indicators of impairment. Upon deciding to stop the vehicle the officer will follow established guidelines for traffic stops and use safety techniques as necessary. From the time the officer activates his emergency lights until the time the violator comes to a stop the officer will make note of any reinforcement clues that indicate impairment.
- b. Crash Investigation -In most crash situations, the responding officer did not actually observe the suspected DUI driver in control of the vehicle. The officer must first ascertain whether any other parties can put the suspected driver "behind the wheel". If the suspected DUI driver committed a violation that resulted in the crash, then that violation(s) is the officer's detection clue for the DUI violation.

3. INVESTIGATION AND SCREENING

- a. At the onset of DUI investigation, the officer should begin to make use of the DUI influence report form. This form is used as an aid to the officer for recording their field observations of the suspect. The form is also used by the chemical and/or physical test operator for recording their observations. The form is to be initiated by the arresting officer at the scene of the arrest.
- b. Observed violations: Once the officer has come in contact with the suspected DUI driver, then the investigative phase of the process begins. The officer will note any physical signs of impairment or any behaviors that indicate impairment. These include, but are not limited to: odor of alcoholic beverage, bloodshot or watery eyes, impaired speech, clumsiness, etc. If the officer feels that further screening is necessary, then all or any of the Field Sobriety Tests (FST's) should be administered.
- c. Supervisors may request that a PBGPD Drug Recognition Expert (DRE), if available, respond to a DUI incident to assist in screening.
- d. FST's are five (5) observable tasks that are approved for use in the State of Florida. These tasks are the HGN (horizontal gaze nystagmus), the walk and turn, the finger to nose, the one leg stand, and the Romberg alphabet. Each task should be administered in a manner consistent with the officer's training and the results of each are to be recorded on the DUI influence report.
- e. Crash Investigation - If, during the investigation of a traffic crash the officer has reason to believe that one or both of the drivers is DUI, then the officer will advise the suspect(s) of their Constitutional Rights and will continue with the crash investigation until the point is reached where the officer has determined how the crash took place. During the investigation, the officer will observe the suspect for any behaviors that indicate alcohol or drug influence. Once the crash investigation is complete, the officer will advise the suspect of the end of the crash investigation and the beginning of a criminal investigation and obtain the acknowledgement from the suspect. This "change of hats" is necessary to prevent the information gathered during the screening of the suspect from falling under the confidentiality of a crash report, as provided by Florida Statute. The officer may then administer physical performance tests as provided for under "observed violations."
- f. As an alternative to "changing hats" officers may read the suspect driver Miranda upon arrival and before any questioning or crash report investigation is begun.
- g. If the suspected DUI driver has been injured in the crash to the extent that they will be transported to a medical facility, then administration of the physical performance tests may be inappropriate or impossible.
- h. If the results of the physical performance tests, in conjunction with other observations at the scene indicate to the officer that the subject is impaired, then the subject may be placed under arrest for DUI. It is imperative to point out that the decision to arrest is based solely upon the officer's evaluation and

judgment. However, the subject must be under arrest before they can be asked to submit to a chemical and/or physical breath test.

- i. If chemical and/or physical breath test is not possible, then urine or blood may be asked for, however the subject may not be placed under arrest pending the urine or blood test results.
- j. The arrested subject will be secured and transported according to established departmental guidelines. The subject vehicle will be secured according to established departmental guidelines.

4. UNDER AGE 21 DRIVING WITH BAC 0.02 OR HIGHER

- a. Per §322.2616, Fla. Stat., it is unlawful for a person under the age of 21 who has a blood-alcohol or breath-alcohol level of 0.02 or higher to drive or be in actual physical control of a motor vehicle. A violation of this statute is neither an infraction nor a criminal offense, but is subject to an administrative review by the DHSMV. This is in addition to §316.193, Fla. Stat. When investigating a person under the age of 21 for such violation, the officer must first conduct an investigation for DUI. The investigation for a violation of §322.2616 should follow the DUI investigation.
- b. An officer who has probable cause to believe that a motor vehicle is being driven by or is in the actual physical control of a person who is under the age of 21 while under the influence of alcoholic beverages or who has any blood-alcohol or breath-alcohol level may lawfully detain such a person and may request that person to submit to a test to determine his or her blood-alcohol or breath-alcohol level.
- c. If a person under the age of 21 has a BAC level of 0.02 or higher or refuses to submit to a BAC test the officer shall notify the subject that his/her driving privilege is suspended.
- d. The officer shall seize the person's driver's license and issue a 10-day temporary driving permit if the person is otherwise eligible for the driving privilege, and shall issue the person a notice of suspension (HSMV 72103).

5. CHEMICAL AND/OR PHYSICAL TEST ADMINISTRATION

- a. Observed Violations -After the DUI driver has been placed under arrest, the arrestee will be transported to the Palm Beach County Sheriffs Office where approved chemical and/or physical tests will be administered. A chemical and/or physical test operator will be assigned to perform the test.
- b. The entire chemical and/or physical test administration procedure will be videotaped for evidential purposes. The operator will activate the videotape equipment at the start of the process. At the onset of the testing, the operator will ask the officer if the suspect has been arrested for DUI. The arresting officer will then request that the suspect be offered and administered an approved chemical and/or physical test.
- c. The driver will be offered a chemical and/or physical test of their breath. If the subject agrees, then a chemical and/or physical breath test will be administered by the operator. In accordance with State of Florida Department of Health and Rehabilitative Services regulations, two (2) tests of the subject's breath will be taken within (5) minutes. If the results of the tests are more than + 0.02% different, then a third test will be given. If the subject refuses to take any of the tests, then procedures will be followed and indication of such refusal will be noted, along with pertinent information on a refusal to submit to breath test form.
- d. After completion of the chemical and/or physical test, the arresting officer will advise the driver of their Constitutional Rights and proceed with a questioning of the driver. At the conclusion of the questioning, the operator will deactivate the videotape equipment and complete the appropriate administrative paperwork and turn the suspect over to the arresting officer for booking.
- e. If the results of the chemical and/or physical breath test are below .000 - .079 BAC, Florida Statutes presume that the suspect is not under the influence of an alcoholic beverage. If the physical performance tests of the suspect were poor enough to give the arresting officer probable cause to arrest the subject(s) for DUI, then the arresting officer should request that the subject submit to a urine test to detect the presence of controlled substances.
- f. Plastic containers for urine collection are kept in the cabinet in the chemical and/or physical test room at the Sheriffs Office. Procedures for administering the urine test are promulgated by PBSO, and must be

followed.

- i. PBGPD officers will use the appropriate measure for subjects of the opposite sex of arresting officer.
- g. If the suspect takes the chemical and/or physical breath test and then refuses the urine test, it is considered a refusal of the test and the appropriate procedures will be followed.
- h. The chemical and/or physical test operator will be required to complete the video log, the chemical and/or physical breath test operational log; the operational checklist for the instrument used, the chemical and/or physical breath test results card (either breathalyzer or intoxilyzer), and the report of chemical and/or physical test form. The operator will return these documents, along with the DUI influence report form, to the arresting officer. Chemical and/or physical test crash investigation:
 - i. Crash Investigation - If the suspected DUI driver is not injured and taken to a medical facility, then the above chemical and/or physical test administration procedure will be followed.
 - ii. If the driver is transported to a medical facility for treatment of injuries sustained in a crash, then the officer may be authorized to take blood sample from the suspect for alcohol content analysis.
 - iii. Due to the fact that injuries sustained in a crash may make the administration of physical performance tests impractical or impossible, it is not necessary for the officer to place the driver under arrest prior to requesting a blood sample for analysis. If the driver is unconscious, the driver is presumed to have given their consent for the blood withdrawal and the sample may be taken. If the driver is conscious, then permission to take the sample must be obtained. If the driver refuses to submit to the withdrawal, then procedures for a chemical and/or physical test refusal must be followed.
 - iv. Pursuant to Florida Statute 316.1933, if the driver has been involved in a crash that resulted in serious bodily injury or death, to either them self or another, they do not have the right to refuse the withdrawal of blood for alcohol content analysis, and the officer may use whatever reasonable force is necessary to obtain the sample. If faced with this situation, the officer should request the presence of a supervisor prior to taking the sample.
 - v. All blood samples will be taken using an approved blood alcohol collection kit. Currently, venoject kits are available for use. Venoject kits are available to patrol units and are kept in supervisor cars and crash investigation units. The kit is self contained and is to be used in all cases. The investigating officer must request from hospital personnel that a blood sample for evidential purposes be taken. A request for blood test form should be prepared in duplicate, the original kept by the officer and the duplicate given to the person drawing the sample. The officer should insure that the person drawing the sample is authorized by law to draw the sample. Florida statute 316.1932 (1) (f) (2) requires that the person taking the sample be a physician, certified paramedic, registered nurse, licensed practical nurse, or duly licensed clinical laboratory technologist or clinical laboratory technician.
 - vi. The collection kit is to be turned over to the person withdrawing the sample. The officer will witness the blood withdrawal and then take possession of the samples, labeling each and sealing each with the provided seals. The samples, along with everything that was originally in the kit will be returned to the kit and sealed. The blood sample will then be stored in the evidence refrigerator located in the report room for transfer to the crime laboratory for analysis.
 - vii. A suspect arrested for DUI will be offered a chemical and/or physical breath, urine or blood test. If the suspect refuses to submit to one, all or any combination of the tests, it is considered a refusal. The arresting officer must then advise the suspect that refusal to submit to the chemical and/or physical test offered will result in a suspension of the suspects driver license for a period of 12 months if this is their first refusal, or 18 months for a second refusal to submit to the test, additionally if this is a second or subsequent refusal then the subject may be charged with a misdemeanor. The subject will also be advised that refusal to submit to a chemical and/or physical test shall be admissible in court. If the subject still refuses, then a refusal to submit to chemical and/or physical test form will be completed by the arresting officer and notarized or attested to by a person authorized to do so.
 - viii. If the suspect refuses the offered test, but would submit to another type of test (i.e., offered chemical and/or physical breath but agrees to blood test) then it is considered a refusal.

- i. If the arrested suspect has provided a valid chemical and/or physical breath, blood, or urine sample and request the withdrawal of a blood sample for independent analysis, the officer will, after completion of the testing procedure, provide the suspect with timely telephone access to secure the test. The suspect is responsible for making all arrangements and expenses to secure the test.

6. BOOKING AND ADMINISTRATIVE WORK

- a. Once the subject has completed chemical and/or physical testing, then normal booking procedures will be followed.
- b. The state attorney's office has mandated the preparation of a probable cause affidavit by the arresting officer for DUI arrest. The arrest notice to appear form will be completed by the arresting officer. A narrative will be completed, documenting the entire arrest procedure. The information recorded on the DUI influence report can be used as a guideline for the narrative. The probable cause affidavit should include the following:
 - i. How the suspect was established as being in physical control of the vehicle;
 - ii. Any detection or reinforcement clues noted;
 - iii. The actions noted during the investigative phase of the arrest, including the physical performance tests administered and the results of the tests; and
 - iv. Results of any chemical and/or physical tests administered.
- c. The arresting officer will complete an offense incident report.
- d. The arresting officer will complete the proper traffic citation(s):
 - i. For B.A.C. levels .08% or higher and refusals a DUI citation will be issued.
 - ii. If the BAC is below .08% and there is a pending blood\urine analysis, and the driver has been arrested then a uniform traffic citation for DUI will be issued.
- e. If blood or urine samples were taken, then evidence reports forms should be completed. Additionally, Palm Beach County Sheriff's Office evidence sheets will be completed and accompany the samples to the lab. A toxicology information sheet will also be completed for blood or urine sample cases.
- f. A copy of all associated paperwork will be made and forwarded to the State Attorney's Office following normal case filing procedures.

7. SOBRIETY AND SAFETY CHECKPOINTS

- a. The purpose of the Sobriety and Safety Checkpoint Program is to screen as many drivers and vehicles as possible for DUI violations and check for seatbelt\equipment violations while causing the least amount of inconvenience to the driver. To assure that our purpose and philosophy is carried out; officers operating a checkpoint site are to quickly screen the driver's license while observing the condition of the driver and passengers still in the vehicle. Without any violations present, the entire procedure takes no more than 60 - 90 seconds.
- b. Checkpoint locations shall be selected in advance by the Traffic Supervisor according to objective criteria that will maximize contact with DUI's, for example, locations with a high incidence of DUI fatalities or arrests, nighttime injuries, or single vehicle crashes.
 - i. The Traffic Supervisor must select a site which allows officers manning the checkpoint to pull vehicles out of the traffic stream without creating a safety hazard.
 - ii. If the traffic volume precludes stopping every vehicle, a non-discretionary plan must be adopted in advance for stopping some subset of vehicles (every vehicle need not be stopped as long as a systematic method of checking is used, for example, stopping every tenth or twentieth vehicle)
- c. Special care shall be taken to provide adequate warning to approaching motorists that a checkpoint has been established. Such notice shall be accomplished with warning signs, participating agencies' marked vehicles with hazard lights flashing and with flares. Warning signs, agency vehicles and flares shall be placed along the roadway well in advance of the checkpoint to alert motorists. At the checkpoint itself; marked agency vehicles shall be parked along the roadway with hazard lights as well as blue lights

activated.

- d. The visibility of uniformed officers and their marked agency vehicles establishes the obvious presence of the Sobriety and Safety Checkpoint officers and serves to reassure motorists of the legitimate nature of the activity. Therefore, all personnel conducting sobriety and safety checkpoints shall be in uniform and only marked vehicles will be used.
- e. All chemical and/or physical testing of suspected DUI drivers will be conducted at the Palm Beach County Sheriffs Office Breath Testing Facility. All suspected violators will be transported to the designated facility in a marked agency vehicle.
- f. If intermittent traffic conditions cause officers to deviate from the predetermined order of selecting motorists, for example, a traffic back-up occurs, the reasons for the change must be thoroughly documented.
- g. If too much traffic develops at a checkpoint causing a backup that cannot be easily alleviated, the officer in charge of the checkpoint may consider discontinuing operations at the site or moving to an alternative site, providing that the alternative site was identified in advance.
- h. To obtain maximum benefit in terms of its general deterrence effect, the Department DUI Sobriety and Safety Checkpoint Program shall be aggressively publicized. The Traffic Supervisor shall provide notice of checkpoint operations to local media outlets. This notice shall be provided to media outlets weekly beginning two weeks prior to the date of the checkpoint operation and again on the day of the operation.
- i. The following steps should be utilized when stopping vehicles at the checkpoint:
 - i. The officer should greet the driver as follows: Good evening. I'm Officer (last name) from the Palm Beach Gardens Police Department and we are conducting a Sobriety and Safety Checkpoint. May I see your driver's license please?
 - ii. While waiting for the driver to produce a license, the contact officer should be observing for indications of DUI.
 - iii. If the driver appears to be under the influence, the officer should obtain the driver's license so they can observe the driver's manual dexterity.
 - iv. If an officer finds an equipment violation or a driver's license is not produced, the officer will advise the driver to pull over to a safe parking area where the violation will be addressed accordingly by waiting officers. The cover officer will communicate to waiting officers by placing a stickered paper on the driver's windshield identifying the violation.
 - v. If the officer feels that the driver is DUI, the officer will ask the driver to step out of the vehicle and step to a safe area. The officer will then ask the driver to participate in roadside performance tasks. The results of those tasks will determine what course of action the officer will take, i.e., arrest of the offender and transport to the testing facility or release.
- j. Every officer working at the checkpoint should be thoroughly familiar with this procedure and shall avoid deviating from any portion of it unless exigent circumstances exist.
- k. The use of checkpoints alone will not sustain the perception of risk essential to an effective general deterrence program. In fact, if drinking drivers believe that their chances of being caught are only at sobriety checkpoints, their perception of risk of arrest might be quite low. Therefore, all officers are, directed to aggressively enforce DUI violations.

8. GLOSSARY

Driver\Operator – any person who operates or is in actual physical control of a vehicle.

Drug Recognition Expert (DRE) – trained officers frequently called upon to differentiate between drug influence and medical and/or mental disorders. The certified DRE is an extremely valuable tool for combating the adverse impact of drug and alcohol impaired driving.

DUI – driving, operating, or in actual physical control of a vehicle while under the influence of alcoholic beverages, chemical substance or controlled substance to the extent that the persons normal faculties have been impaired, or driving with a blood or breath alcohol level of .08% or higher, or driving a commercial vehicle as defined by FSS 316.003(66) with a breath or blood alcohol level of .04% or higher, and under age 21 driving with BAC .02% or higher as defined in FSS 322.2616.

Vehicle – every device, in, upon, or by which any person or property is or maybe transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks as defined in FSS 316.003.

INDEX AS:

- DUI ENFORCEMENT
- SOBRIETY & SAFETY CHECKPOINT

RESPONSIBILITY INDEX

- TRAFFIC UNIT SUPERVISORS

DRAFTED: SDD / 03-04-13 FILED: 4.2.3.10.PDF

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10/01/13
Date