

FLAGLER COUNTY SHERIFF'S OFFICE



GENERAL ORDER

Effective Date: December 05, 2014	<input type="checkbox"/> New <input type="checkbox"/> Rescinds: <input checked="" type="checkbox"/> Amends: GO 491 dated 05/23/14	Number: 491
Subject: DUI Enforcement		
Distribution: All Sworn Law Enforcement Employees	CFA Standards: 22.03 M A, 22.06 M, 34.14 A-E FCAC Standards:	

- I. **Scope and Purpose:** This General Order (GO) applies to all Flagler County Sheriff's Office (FCSO) Deputies and establishes policy and procedures for Deputies to follow when dealing with suspected Driving Under the Influence (DUI), .02 violators and DUI check points. [CFA 22.03 M A]

- II. **Discussion:** The FCSO views DUI as a serious violation of the law and recognizes that it is a major factor contributing to in the injuries and fatalities on the roadways of Flagler County.

- III. **Policy:** In an effort to reduce the number of deaths and injuries caused by DUI related crashes in Flagler County, Deputy Sheriff's will make it a priority and take a zero tolerance approach to the enforcement of Florida State Statutes pertaining to DUI and .02 Violations whenever and wherever possible.

- IV. **Forms:** [CFA 34.14 M B]
 - SA 767.
 - Blood Alcohol Analysis Affidavit, FDLE/ATP Form 15.
 - Breath Test Alcohol Affidavit, FDLE/ATP Form 38 Ref 11D-8.007.
 - Certification of Blood Withdrawal FDLE/ATP Form 11.
 - DUI Citations, HSMV 75904.
 - Affidavit of Refusal to Submit to Breath, Urine or Blood Test, DHSMV Form 78054.
 - Florida Crash Report HSMV 90003.
 - Notice of Suspension Citation, form HSMV 78103.
 - Request for Blood Test, HSMV 72054.

- V. **Procedures:** [CFA 22.03M A, 22.06 M, 34.14M A-E]
 - A. Suspected DUI:

1. If the Deputy observes indicators of impairment from the traffic violator, the Deputy should initiate a DUI investigation to determine the extent of impairment.
2. All aspects of the investigation will be recorded on the Deputy's body worn camera, if equipped.
3. A back-up Deputy may be called to assist and to ensure Deputy safety.
4. The back-up Deputy should attempt to record the investigation from a different angle than the original Deputy, if equipped with a camera.
5. The suspected violator will be asked to perform the Standardized Field Sobriety Exercises (SFSE).
6. If the defendant refuses to perform any SFSE as requested they will be warned that the refusal to perform these tests can be used against them in a court of law and that the deputy will have to make their decision whether or not to arrest based on what they have already seen up to that point of their investigation.
7. The SFSE will be administered using National Highway Traffic Safety Administration (NHTSA) procedures.
8. The investigating Deputies will document the field sobriety test using the SA 767.

B. Probable Cause for Arrest: [CFA 22.06 M]

1. The defendant cannot be arrested on the mere refusal to perform SFSE's alone.
2. An arrest can be made if the totality of the circumstances, driving pattern, common indicators, statements and other evidence rise to the level of Probable Cause.
 - a. The defendant will be handcuffed and a search conducted as per FCSO GO's pertaining to Deputy/arrestee safety.
 - b. The defendant's vehicle for a DUI arrest will be searched incident to arrest to locate potential evidence.
 - c. Any passengers or witnesses will be documented, interviewed and sworn written statements taken if possible.
 - d. The defendant should be asked if they are intending to take a breath test. If they answer no, they will not be read implied consent until they are actually in front of the breath instrument.
 - i. The defendant will be taken to the Detention Services Division (DSD) for booking and for being offered a breath test.
 - ii. If the defendant indicates he/she will not take a breath test the Breath Test Operator (BTO) shall then read the Implied Consent Warning to the defendant from standardized text and will adhere to all Florida Department of Law Enforcement (FDLE) breath testing rules and procedures.

- iii. Once the defendant has made the decision to either submit to or refuse the breath test, and during the 20 minute waiting period, the deputy should read Miranda from prepared text and ask the defendant the interview questions on the SA 767. Miranda should only be read after the defendant has either agreed to submit to the test or refused the test.
 - iv. Any refusal shall be documented by the breath test instrument and the DSD video system and/or the deputy's body worn camera. Exceptions to this section are dealing with combative defendants or defendants with health emergencies.
 - v. At the conclusion of the breath test or after a refusal to take the breath test, the defendant will be booked into the FCSO DSD.

- 3. In all DUI cases, Florida law provides that once an arrest is made, the defendant must remain in custody for eight (8) hours, until not impaired or until the BAC is less than .05. Please refer to FCSO DSD CD# 10.02 for more on this topic.
- 4. Juveniles may be released into the custody of a parent, guardian or responsible adult.
- 5. Florida law provides enhanced penalties for a person who is convicted of DUI and who, at the time of the offense, was:
 - a. Accompanied by a person under the age of 18.
 - b. Has a blood or breath alcohol level of .15 or above.
 - c. If either of these conditions exists you should document these in the narrative section of the FCSO Reporting System.

- 6. If the defendant is involved in a crash which causes damage to multiple vehicles, property or injury to more than one person then multiple charges can be filed.
 - a. A Long Form Florida Crash Report will be completed.
 - b. The Florida Crash Report will be turned in by the end of the Deputy's shift.
 - i. With a supervisor's approval, the time may be extended but is not to exceed 24 hours.
 - c. The Deputy will complete as many DUI citations as warranted, placing an "X" through the suspension section at the bottom of the citation. [CFA 23.01 C]
 - d. The Deputy will turn in the citations no later than 24 hours after their issuance.

C. Defendant's Vehicle:

1. If the owner or co-owner is present and not the defendant the vehicle may be released to that person. That person must be sober and a licensed driver.
2. An inventory will be conducted on all vehicles not being released to an owner or designee and FCSO towing procedures will be followed.

D. Breath Test:

1. The Breath Test Operator (BTO) shall read implied consent to any person who initially refuses to take the breath test.
2. If the defendant provides a breath sample the BTO shall follow all FDLE rules and regulations concerning the operation of the instrument. They will then sign and have notarized the Breath Test Alcohol Affidavit printed out by the Intoxilyzer 8000.
3. During the 20 minute observation period, the defendant shall not be left alone while in the Breath Test Room.

E. Urine Test:

1. If the breath test results are not consistent with the perceived level of impairment a urine test should be requested.
2. The BTO should again read the implied consent warning to the defendant and request that they furnish a urine specimen.
3. The collection of urine specimen must be done with a certain amount of privacy and under the supervision of a same sex employee. The FCSO personnel with the defendant must be able to testify that the urine was that of the defendant.
4. A urine specimen collection cup will be utilized to collect the specimen.
 - a. Urine collection cups may be obtained in the FCSO BTO room.
 - b. Urine specimen collection kits shall be packaged separately from other evidence submitted into the evidence refrigerator at any FCSO facility that offers evidence storage. Please see FCSO GO # 490 for more information.

F. Blood Test:

1. Blood tests may be obtained consensually provided they are voluntary and not obtained pursuant to the Implied Consent statute.
2. Blood tests may also be requested by the investigating Deputy pursuant to Implied Consent (FSS Chapter 316.1932(1)(c)) when the driver appears for treatment at a hospital or other medical facility (including an ambulance) and the administration of a breath or urine test is impractical or impossible.
3. A blood test may also be obtained under FSS 316.1933(1) when the Deputy has probable cause to believe that a motor vehicle driven by or in actual

physical control of a person under the influence of alcoholic beverages or controlled substances has caused the death or serious bodily injury of a human being. If exigent circumstances are not present the deputy shall obtain a warrant before obtaining a blood sample. In the case of *Missouri v. McNeely*, 133 S.Ct. 1552 (U.S. April 17, 2013), the United States Supreme Court held that the dissipation of alcohol in the human body-standing alone does not establish an exigent circumstance that justifies nonconsensual blood testing in DUI investigations without a warrant. Instead, the Determination of whether exigent circumstances allow for a nonconsensual blood draw without a warrant must be examined under the totality of the circumstances, on a case-by-case basis.

4. A law enforcement officer may use reasonable force necessary to require a person to submit to the administration of the blood test.
5. The requesting Deputy shall complete the Request for Blood Test form.
6. An approved Blood Specimen Collection Kit will be utilized to collect the sample.
 - a. Blood Specimen Collection Kits may be obtained from the FCSO Operations supply room or from a supervisor.
 - b. Blood specimen collection kits shall be packaged separately from other evidence and submitted into the evidence refrigerator at any FCSO facility that accepts evidence.
7. Certification of Blood Withdrawal shall be completed by the person drawing and analyzing the blood, as indicated on the form.
8. A Deputy must witness the actual withdrawal of blood.
9. The Deputy requesting the blood specimen will record the name of the technician, nurse or doctor drawing the sample and will record the chain of custody of the sample.
10. When a defendant has given a blood specimen and the results are not immediately available to the Deputy and unless there is some overriding necessity to arrest the DUI suspect (such as he is already under arrest for a related charge, or he is a flight risk) no DUI arrest should be made in blood draw cases.
11. Although FSS 316.1932(1)(f)2.b.e. and 316.1933(2)(a)1.4. provides that any health care provider who is providing medical care in a health care facility to a person injured in a motor vehicle crash, and who becomes aware (as a result of any blood test performed in the course of that medical treatment) that the person has an unlawful blood alcohol level, may notify any law enforcement officer or law enforcement agency, the FCSO shall not use that BAL to make an arrest. They shall follow the procedures listed above and obtain a warrant or request the SAO obtain the records via subpoena. All reports shall reflect pending until the actual lawful results are obtained.

G. Blood Testing at the Request of the Defendant:

1. Pursuant to 316.1932(1) (f) 3 *"The person tested may, at his or her own expense, have a physician, registered nurse, or other personnel authorized by a hospital to draw blood, or duly license clinical laboratory director, supervisor, technologist, or technician or other person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer..."*
...The law enforcement officer shall not interfere with the person's opportunity to obtain the independent test and shall provide the person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.
2. If a defendant has been placed under arrest for DUI and has submitted to a breath test (they must submit to a breath test prior to being allowed to request an independent blood test) and requests that a blood test be completed the arresting Deputy will ensure that the defendant is provided access to a telephone and a telephone directory by DSD personnel to make arrangements for an independent blood test to be conducted at DSD.

H. Refusal:

1. If the defendant refuses to submit to a Breath, Urine or Blood Test the BTO will complete an Affidavit of Refusal to Submit to Breath, Urine or Blood Test. The arresting Deputy shall swear to the contents of this affidavit by taking an oath prior to signing it before a Notary Public or Attesting Officer.
2. The DUI citation will reflect the fact that a breath test was refused. Check the "Breath Test Refused" block on the lower portion of the DUI citation.

I. Citation Distribution:

1. After the defendant receives their yellow copy, the top copy of the DUI/UTC will be provided to DSD Booking personnel to be attached with the 767. All other copies of the UTC and DUI Citation will be forwarded to records.

J. Video Evidence – All uses of video documentation shall be documented in the incident report and the 767. Please see FCSO GO # 493.

K. DUI Documentation: [CFA 34.14 M A B]

1. The entire investigation will be documented and combined in a DUI packet using:
 - a. The FCSO Reporting System.
 - b. 767.

c. Other appropriate FCSO, DHSMV and FDLE forms. [CFA 34.14 M B]

2. DUI packets will be completed by the arresting Deputy, approved by a supervisor and must be received by the Records Section within three (3) calendar days: [CFA 34.14 M C, D,E]

a. Records Section:

- i. Defendant's Driver's License.
- ii. All copies of the citation, minus the original and defendants copy. The deputy copy may be retained by the deputy or can be turned into Records.
- iii. All copies of the DUI citation—minus the original and the defendants copy. The deputy copy may be retained by the deputy or can be turned into Records.
- iv. Original Breath Test Alcohol Affidavit.
- v. Original Affidavit of Refusal to Submit to Breath, Urine or Blood Test.
- vi. 767.
- vii. Original Blood Alcohol Analysis Affidavit.
- viii. Original Certification of Blood Withdrawal.
- ix. Original of Long Form Florida Crash Report.

L. .02 Violations: [CFA 34.14 M D]

1. If a Deputy Sheriff makes contact with a person who is:

- a. Operating or in actual physical control of a motor vehicle.
 - i. Who is under 21 years of age.
 - ii. Believes that the person has consumed an alcoholic beverage.
 - iii. Does not meet the criteria for DUI.

2. The Deputy should:

- a. Read the Implied Consent Warnings printed at the bottom of the first copy of the Notice of Suspension citation.
- b. If not so equipped, request that a Deputy with a PBT be enroute.
- c. Obtain two breath samples.

3. If the results of the breath test, which must be within .02 agreements, are .02 or higher:

- a. The subject's driver's license is administratively suspended for six months for the first violation.

- b. Take possession of the defendant's Driver's License.
 - c. Note the results on the Breath Test Result Affidavit for Under Age 21 Suspensions, page 3 of the Notice of Suspension citation.
 - d. Fill out the Notice of Suspension, page 5 of the Notice of Suspension citation.
 - e. The Deputy will explain to the defendant that the yellow copy of the Notice of Suspension citation will serve as a legal notice of the suspension, as well as a 10-day temporary driving permit beginning 12 hours after its issuance.
4. The subject's Driver's License is suspended for one year if their driver's license has been previously suspended for a .02 violation and if the subject refuses to submit to a breath test.
5. If the subject refuses to submit to a breath test:
- a. Take possession of the defendant's Driver's License.
 - b. Fill out the Affidavit of Refusal to Submit to Breath Test, page 4 of the Notice of Suspension citation.
 - c. A check though teletype should be made to see if the subject is eligible for a permit.
 - d. Temporary permit eligibility information is part of the response from the DHSMV when Teletype initiates a driver's license check.
 - e. The Deputy will indicate whether the defendant is eligible for a temporary permit.
 - f. The Deputy will explain to the defendant that the yellow copy of the Notice of Suspension citation will serve as their legal notice of the suspension, as well as a 10-day temporary driving permit beginning 12 hours after its issuance.
 - g. Fill out the Affidavit of Probable Cause, page 2 of the Notice of Suspension citation. Release the driver to a parent, guardian or responsible adult if the driver is less than 18 years of age.
 - h. Turn in the subject's Driver's License and original Notice of Suspension citation and other companion citations within 24 hours of issuance.

M. Administrative Suspension Law:

1. Administrative Suspension:

- a. The State of Florida has an administrative procedure for the immediate suspension of a defendant's driver's license when a defendant's alcohol level is .08% or above or when a defendant refuses to submit to a breath, blood or urine test.
- b. When an FCSO Deputy arrests a defendant for DUI the Deputy will immediately take possession of the defendant's driver's license, if a

breath alcohol level of .08% or above is obtained and a defendant refuses to submit to a breath, blood or urine test.

- c. The Deputy will complete either an electronic or paper DUI citation.
- d. A check should be made to see if the subject is eligible for a permit.
 - i. Temporary permit eligibility information is part of the response from the DHSMV when a driver's license check is initiated.
 - ii. The Deputy will indicate whether the defendant is eligible for a temporary permit.
 - iii. The Deputy will explain to the defendant that the yellow copy of the DUI citation will serve as a legal notice of the suspension and a 10-day temporary driving permit.
- e. If the breath alcohol results are below .08%:
 - i. There is no Administrative Suspension process.
 - ii. The Deputy shall complete a standard paper or electronic Uniform Traffic Citation charging the defendant with DUI in lieu of a DUI citation.

N. DUI Check Points:

1. The Traffic Unit Supervisor will make the selection of each DUI check point and there will be a set of clear guidelines established and approved before the checkpoint is conducted. These guidelines will set out reasonable specific procedures regarding the selection of vehicles, detention techniques, duty assignments and the disposition of vehicles.
2. Deputies will keep the degree of intrusion upon motorists and the length of detention of each driver to a minimum.
3. Several factors should be used to identify and determine where a check point will be conducted. These factors include, but are not limited to, statistical or other relevant information obtained from the following:
 - a. Alcohol and drug related arrests, crashes and experiences.
 - b. FCSO interest.
 - c. Community interest.
 - d. Prior check point locations.
 - e. Visibility to the community.
 - f. Analysis of roadways on which alcohol and/or drug related crashes have occurred.
 - g. Ample room for law enforcement and subject vehicles.
 - h. Availability of a secondary screening area.
 - i. Freedom from business and residential driveways, alleys and intersecting streets or highways that may be impacted by the operation.
 - j. The roadway and parking areas should be well-drained.
 - k. Freedom from obvious hazards on the highway.

- l. Adequate advance warning signs and sufficient lighting to ensure motorist and member safety.
 - m. Comprehensive Roadside Safety Checkpoints (CRSCs) are prohibited from being conducted on limited access roadways.
 4. Some additional factors that should be considered while choosing a sobriety checkpoint location are:
 - a. The hour of the day and the day of the week to ensure maximum effect.
 - b. The amount of traffic along the proposed checkpoints to ensure activity levels.
 - c. The justification of time (personnel hours) and equipment to ensure they are used properly and efficiently.
 - d. The safety of citizens and law enforcement personnel at the site location.
 - e. The site location should minimize inconvenience to the motorists.
 - f. Adequate road space and parking areas to pull vehicles off of the traveled portion of the roadway for inquiries.
 - g. The amount of natural or artificial light at the checkpoint, to ensure the location will be highly visible.
 5. The Traffic Unit Supervisor or their designee shall submit a memorandum to the Neighborhood Services Division (NSD) Senior Commander requesting authorization to conduct a sobriety checkpoint. The memorandum requires a written authorization by initials on the Operational Orders from the Senior NSD Division Commander authorizing the checkpoint. The requesting memorandum, a mandate before any DUI checkpoint is conducted, needs all pertinent data to support the checkpoint authorization to include the following:
 - a. DUI statistical information or other relevant sources of information.
 - b. Justification of the checkpoint location.
 - c. The date and time of the checkpoints.
 - d. A diagram, which graphically shows the checkpoint, site, the location of all equipment and post assignments.
 - e. The frequency of traffic stops, which are flexible based upon traffic congestion, as well as number of projected, stopped vehicles. (This can include stopping every motorist or every 6th motorist up to every 10th motorist or higher.) The operational plan shall contain the frequency of stops to include who is authorized and when they are authorized to change the frequency. Random stops are not permitted.
 - f. The radio channel to be used.
 - g. A checkpoint agenda indicating the operational timetable, the personnel strengths and need, and the equipment needed.
 - h. A contingency plan notifying the Public Information Officer.

- i. Authorization from the NSD Senior Commander. If authorization is not given, the checkpoint will not be conducted.
6. The Traffic Unit Supervisor, or their designee, designing, implementing and supervising a sobriety checkpoint shall notify the FCSO's Public Information Officer, Communications and all on-duty law enforcement personnel of the activity at least two (2) days prior to the checkpoint occurring. The Public Information Officer shall be provided with sobriety checkpoint information to include the date and time, the checkpoint location and the duration of the checkpoint activity.
7. The supervisor conducting the checkpoint shall meet the participating deputies any other law enforcement officers (troopers/police officers in Flagler County) invited to attend under a mutual aid agreement at a predetermined location and time prior to beginning the checkpoint for a briefing and shall be responsible for the following:
 - a. Providing each deputy/officer with a copy of the authorizing memorandum and related material.
 - b. Informing the deputies/officers of the checkpoint location, deputy/officer positions, equipment and warning sign positions, legal considerations and frequency of traffic stops.
8. Each deputy/officer will be provided a diagram of the checkpoint to allow the deputy/officer to become familiar with the area and their assigned task. Deputies/officers may use the diagram to assist them in courtroom presentations.
9. During the sobriety checkpoint operation, uniformed law enforcement personnel shall wear their traffic safety vests.
10. Law Enforcement vehicle emergency lights will be utilized as warning devices and deployed by direction of the Traffic Unit Supervisor or their designee.
11. The NSD Senior Commander shall designate the person responsible for the overall supervision during the checkpoint.
12. Deputy/Officer Responsibility:
 - a. The DUI Checkpoint Lead Deputy is the supervisor designated by the NSD Senior Commander and is responsible for the following:
 - i. Briefing and debriefing all personnel.
 - ii. The overall supervision of the checkpoint.
 - iii. Altering the frequency of vehicles stopped for emergency purposes only.
 - iv. Determining the time limits of the checkpoint.
 - v. Discontinuing the checkpoint for the length of time necessary to avoid traffic congestion or other circumstances arising that warrant the discontinuance of the operation.

- b. The Observation Deputy/Officer Responsibilities are:
 - i. Watching for motorists who may attempt to avoid the checkpoint.
 - ii. Determining if the driving pattern exhibits signs of impairment.
 - iii. A motorist who, by legally turning before entering the checkpoint area, should be allowed to do so unless a traffic violation is observed or probable cause exists, or it is reasonable to infer that the driver is intentionally avoiding the checkpoint, as one Florida appellate court has noted that “a number of courts in other jurisdictions have determined that a driver’s mere attempt to avoid a roadblock is sufficient to give rise to a reasonable suspicion that the driver was engaged in some form of criminal activity.”
 - iv. Conducting a traffic stop with the permission of the Lead Deputy.
- c. The Data Collection Deputy is responsible for maintaining records to include the following:
 - i. The number of vehicles passing through the checkpoint.
 - ii. The number of motorists detained for field sobriety testing.
 - iii. Documenting time delays to motorists.
 - iv. The number and types of arrests.
 - v. The number of traffic citations issued.
 - vi. The duration of the checkpoint.
 - vii. Preparing an after-action report.
- d. The Lane Safety Deputy is responsible for ensuring that warning signs, barricades or flares are in place and remain there, as well as assisting the Data Collection Deputy.
- e. Checkpoint Contact Deputies/Officers responsibilities are:
 - i. Making contact with approaching vehicles.
 - ii. Obtaining identification, registration and proof of insurance. Only check the status of a driver’s license when the driver cannot exhibit the license and if necessary, issue the appropriate traffic citations at the staging area.
 - iii. If a driver is suspected of being impaired the deputy/officer will request the driver to exit the vehicle and escort the driver to the staging area to conduct a field evaluation. . Have a support deputy/officer remove the vehicle to the staging area. Release or arrest the driver following the conclusion of the field sobriety

tests and if an arrest is made, complete required reports and citations.

13. Equipment Required - An equipment list for checkpoints includes the following:
 - a. Flashlights.
 - b. Portable radios.
 - c. Transport vans (if necessary).
 - d. All necessary report forms, citation books.
 - e. Traffic safety vests.
 - f. Portable lighting.
 - g. Safety cones/barricades.
 - h. Flares, if needed.

14. Warning signs will be placed at the sobriety checkpoint location. Warning signs should be at vehicle operation eye level, reflective and positioned according to checkpoint design drawing. The following minimum three (3) signs shall be used:
 - a. Warning: Sobriety Checkpoint Ahead.
 - b. Reduce Speed Ahead.
 - c. Stop Sheriff Checkpoint.

15. Safety Considerations:
 - a. Each DUI check point will be staffed with a sufficient number of uniformed deputies/officers to maintain a safe and efficient operation.
 - b. Appropriate reflective safety equipment will be used by all deputies/officers.
 - c. It is imperative that unobstructed and clear communications occur between all deputies/officers.
 - d. The staging area, sobriety test, arrest, vehicle storage, etc., must be free of hazards from the motoring public. The staging area shall be a sufficient distance from the checkpoint to allow for unhindered law enforcement functions.
 - e. Traffic flow will be organized as to minimize confusion, traffic congestion and inconveniences to the motorist.

16. Debriefing - The designated supervisor shall conduct a debriefing immediately following the conclusion of the operation to provide an immediate critique of the operation and receive constructive comments from those involved.

17. After-Action Report:
 - a. An after-action report shall be submitted to the NSD Senior

Commander or designee by the supervisor responsible for the sobriety checkpoint. This memorandum shall be submitted no later than two scheduled workdays after the checkpoint occurred and includes the following:

- i. The number of vehicles passing through the checkpoint.
- ii. The average delay to motorists.
- iii. The number of motorists detained for field sobriety testing.
- iv. The number and type of arrests.
- v. The number and type of traffic citations issued.
- vi. The identification of unusual incidents such as safety problems or other concerns.

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