

WEST PALM BEACH POLICE DEPARTMENT

III-30 PERSONS SUSPECTED OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

EFFECTIVE: 01/01/2005

CALEA Standards: 61.1.5a, 61.1.11, 61.2.2 C, 61.1.10

CFA Standards: 22.03a

I. POLICY: The West Palm Beach Police Department has established guidelines for handling persons charged with driving under the influence of alcoholic beverages and/or controlled substances. In an attempt to standardize testing of suspected DUI drivers, certain procedures have been established and are to be followed by the arresting officer. When suspected DUI drivers are offered and administered chemical tests, rules, and regulations as set forth by the State of Florida must be adhered to. Local guidelines established by the State Attorney's Office must be followed in order to provide a uniform standard for prosecution of these cases.

II. PROCEDURE:

A. Driving while under the influence of alcoholic beverages or controlled substance (DUI) violations fall under two categories:

1. Violations that are observed or witnessed by the officer while on patrol; and
2. Violations that are observed during the course of a traffic crash investigation.

B. While the DUI case building process for each of these is the same, the arrest process will differ during each phase.

C. Each DUI case is broken down into the following steps:

1. Detection and reinforcement;
2. Investigation and screening;
3. Arrest;
4. Chemical Test Administration; and
5. Booking and Administrative work.

III. DETECTION AND REINFORCEMENT PHASE:

A. Observed Violations - The officer 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 or her emergency lights until the time the violator comes to a stop, the officer will make note of any reinforcement clues that indicate impairment.

B. Traffic 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 evidence or any other party can identify the suspected driver and place him or her behind the wheel. If the suspected DUI driver committed a violation that resulted in the crash, the violation is the officer's detection clue for the DUI violation. By its very definition, there can be no reinforcement clues in a crash investigation.

C. D.U.I. Enforcement Program – The Traffic Sergeant is responsible for directing D.U.I. and traffic enforcement program. The objective of this program is:

1. To provide proactive patrols during peak hours, and at targeted locations, utilize weekly crash data provided to the Traffic Sergeant.

2. To participate in joint traffic enforcement operations.
3. To provide training as needed to agency personnel in impaired driver detection skills.
4. To operate and maintain breath testing equipment.
5. To organize and operate sobriety checkpoints for the purpose of roadway interdiction.

IV. INVESTIGATION AND SCREENING:

A. Observed violations: Once the officer has come in contact with the suspected DUI driver 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, physical performance tests should be administered.

B. There are three (3) standardized tasks, but there are five (5) physical performance tasks that are approved for use in the State of Florida. These tasks are the Horizontal Gaze Nystagmus (HGN) Task, the Walk and Turn Task, the One Leg Stand Task, the Finger to Nose Task, and the Romberg/Alphabet Task. Each task is administered in a standard manner according to National Highway and Traffic Safety Association (NHTSA) and the results of each are recorded.

V. CRASH INVESTIGATION:

A. When, during the crash investigation, the officer feels that any of the driver(s) are DUI, the officer may advise the suspected DUI driver of their Miranda Rights before questioning during the DUI investigation.

B. When the suspected DUI driver has been injured in the crash to the extent they will be transported to a medical facility, the administration of physical performance tests may be inappropriate or impossible.

1. When the driver is transported to a medical facility for treatment of injuries sustained in a crash, the officer may authorize a qualified person to take a blood sample from the suspect for alcohol content analysis.

2. It is not necessary for the officer to place the driver under arrest prior to requesting a blood sample for analysis.

3. If the driver is unconscious, the driver is presumed to have given his or her consent for the blood withdrawal and the sample may be taken.

4. If the driver is conscious, then permission to take the sample must be obtained.

5. When the driver refuses to submit to the withdrawal, then procedures for a chemical test refusal must be followed.

6. 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 himself or herself or another, he or she does not have the right to refuse the withdrawal of blood for alcohol content analysis. 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 of the sample.

C. When the results of the physical performance tests, in conjunction with other observations at the scene, indicate to the officer the subject is impaired, the subject may be placed under arrest for DUI. **The decision to arrest is based solely upon the officer's evaluation and judgment. The subject must be under arrest before they can be asked to submit to a breath or urine test.**

D. The arrested subject will be secured and transported according to established departmental guidelines. The subject vehicle will be secured according to established departmental guidelines.

VI. CHEMICAL TEST ADMINISTRATION:

A. Observed Violations - After the DUI driver has been placed under arrest, he or she will be transported to the West Palm Beach Police Department where an approved breath test will be administered. The violator will be taken to the test facility located in the booking facility. A Breath Test Operator with a valid certificate will conduct the test. A current list of certified operators will be kept in the Dispatch Operations Bureau.

B. The entire Breath Test administration procedure will be videotaped for evidentiary purposes. The Technician will activate the videotape equipment at the start of the process. At the start of the testing, the Technician will ask the officer if the suspect has been arrested for DUI. The arresting officer will then request the suspect be offered and administered an approved chemical test.

C. The preferred test will be a breath test. If the subject agrees, the breath test will be administered by the Technician. In accordance with Florida Department of Law Enforcement (FDLE) regulations, two (2) tests of the subject's breath will be taken within fifteen (15) minutes. If the results of the tests are more than 0.02% difference, then a third test will be given. If the subject refuses to take any of the tests, procedures for a refusal will be followed. Such refusal will be noted on a Refusal to Submit to Breath, Urine, or Blood Test Form.

D. After completion of the chemical test, the Operator will advise the driver of his/her Miranda Rights and proceed with a questioning of the driver. At the conclusion of the questioning, the Operator will deactivate the videotape equipment, complete the appropriate administrative paperwork, and turn the suspect over to the arresting officer for booking.

E. When the results of the breath test are below 0.05% BAC, Florida Statutes presume 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 for DUI, the arresting officer will request the subject submit to a urine test to detect the presence of controlled substances.

F. Plastic containers for urine collection are kept in the DUI Room. Procedures for administering the urine test are as follows:

1. Allow the suspect to empty the bladder and witness the procedure.
2. Wait 20-30 minutes for the bladder to refill, offering water if needed to assist the process.
3. Have the suspect urinate in the cup. This must be witnessed to preserve chain of evidence.
4. Use appropriate measures for subjects of the opposite gender of the arresting officer.
5. Secure the lid of the sample cup with evidence tape and place it in the evidence refrigerator in the evidence processing area.

G. If the suspect takes the breath test and refuses the urine test, it is considered a refusal of the test and the appropriate procedures will be followed.

VII. COLLECTION OF BLOOD SAMPLES:

A. All blood samples will be collected using an approved blood alcohol collection kit. Currently, NIK kits are available for use. NIK kits are available to patrol units and are kept in supervisor's cars and Accident Investigation Units.

1. The kit contains instructions for use, evidence seals, a permission form, a report form to document the withdrawal, two (2) 10cc vacuum tubes (grey stoppered) which contain a preservative and anti-coagulant chemicals, a syringe, a hypodermic needle, and a non-alcoholic cleansing swab. The kit is self contained and is to be used in all cases.

B. The investigating officer must request from qualified medical personnel that a blood sample for evidential purposes be taken. The officer should ensure the person drawing the blood is authorized by law to draw the

sample. (See F.S.S. 316.1932(f)(2). A Certification of Blood Withdrawal Form, should be prepared in duplicate. The original is to be submitted with the Department copy of the officer's report and the duplicate will remain with the person who drew the blood sample.

C. 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 are to be placed in the original box, sealed and placed into evidence. Consent cards will be placed into evidence separately. The blood sample will then be stored in the evidence refrigerator located in the evidence processing area to await transfer to the crime laboratory for analysis.

VIII. REFUSAL TO SUBMIT TO A CHEMICAL TEST:

A. A suspect arrested for DUI will be offered a 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.

B. The arresting officer must advise the suspect that refusal to submit to the chemical 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. The subject will be advised that refusal to submit to a chemical test will be admissible in court.

C. If the subject still refuses, an Affidavit of Refusal to Submit to a Breath, Urine, or Blood Test Form will be completed by the arresting officer and notarized or attested to by a person authorized to do so.

D. When the suspect refuses the offered test, but would submit to another type of test (i.e., offered breath but agrees to blood test), it is considered a refusal.

E. When, after refusing to participate in the test, the subject changes his or her mind and wishes to take part in the test, the test will be administered provided it is practical to do so.

IX. REQUEST FOR INDEPENDENT TEST:

A. When the arrestee requests the withdrawal of a blood sample for independent analysis, the arrestee must arrange testing. The officer will, after completion of the testing procedure, transport the suspect to a facility within reason for withdrawal of a sample.

B. The transportation should be provided in a timely manner. The arrestee is financially responsible for the withdrawal of the sample. The sample will be given to the arrestee and he or she will be responsible for it. Upon completion of the withdrawal, the suspect will be returned to the booking facility for completion of administrative duties. Arrestee will not take blood samples to the jail, due to a biohazard.

X. BOOKING AND ADMINISTRATIVE WORK:

A. Once the arrestee has completed chemical testing, normal booking procedures will be followed.

B. The State Attorney's Office has mandated the preparation of a Probable Cause Affidavit and Notice To Appear by the arresting officer for a DUI arrest. The narrative of the Probable Cause Affidavit will be comprehensive enough to serve as the body of the Investigative Report.

1. The Probable Cause Affidavit will include the following:

- a. How the suspect was established as being in physical control of the vehicle;
- b. Any detection or reinforcement clues noted; and
- c. The actions noted during the investigative phase of the arrest, including the physical performance tests administered and the results of the tests.
- d. Any statements made by the driver.

C. A Florida Uniform Traffic Citation for DUI will be completed by the arresting officer. Citations for any other violations which support the charge of DUI should be issued. The citations will be copied for submission the State Attorney's Office.

D. If blood or urine samples were taken, then Evidence Report Forms will be completed.

E. 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 Office of the State Attorney following normal case filing procedures.

G. After completion of the chemical test and booking procedures, the suspect will be transferred to the county jail as soon as practicable. Juveniles arrested for DUI will be transported and released to a parent or legal guardian.

XI. REFERENCES:

- F.S.S. 316.193 Driving under the influence; penalties.
- F.S.S. 316.1932 Breath, blood, and urine tests for alcohol, chemical substances, or controlled substances; implied consent; right to refuse.
- F.S.S. 316.1933 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.
- SOP # III-2 Arrestee Transportation.
- SOP # III-24 Stopping and Approaching Vehicles.
- SOP # III-26 Traffic Crash Investigations.
- SOP # III-29 Traffic Warnings, Citations, and Arrests.

Delsa R. Bush, Chief of Police

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