


GAINESVILLE POLICE DEPARTMENT

GENERAL ORDER

	TITLE: Impaired Driver Enforcement		ACCREDITATION: CALEA 61.1.9; 61.1.10; 61.1.2.a and 61.1.5a PRIOR REVISIONS: 1/21/2002, 7/23/2010, 7/08/19 ATTACHMENT:
	PROponent UNIT: Patrol Support Bureau		
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- I. **PURPOSE:** This Order establishes a comprehensive policy for enforcing the laws that prohibit persons impaired due to alcohol, controlled substances, or chemical substances from operating vehicles.
- II. **POLICY:** To reduce the incidence of traffic crashes and fatalities, the Gainesville Police Department shall vigorously enforce Florida's statutes regarding impaired drivers.
- III. **PROCEDURE:** [61.1.10]
- A. **Training:** To provide more effective enforcement and prosecution, the Department shall provide members with training on how to detect, test, and arrest impaired drivers.
1. Members shall be provided training through:
 - i. Basic recruit training,
 - ii. Advanced and Specialized Training at local police academies,
 - iii. Breath Test Technician course.
 - iv. Portable Breath Test (PBT) Device Course. (See G.O. 61.4)
- B. **Enforcement Measures:** The Department may participate in the following prevention and enforcement measures. (The list is not intended to be exhaustive.)
1. Traffic checkpoints;
 2. Selective enforcement;
 3. Participation in community projects and programs (such as Project Graduation);
[61.1.9]
- C. **Detection:** Members can detect an impaired driver through a variety of means.
1. **Actions:** The following are some driving actions that may indicate that a driver may be impaired:

- i. Causing a crash.
- ii. Driving on wrong side of roadway;
- iii. Driving too slow or too fast,
- iv. Driving without headlights on (at night),
- v. Turning with a wide radius,
- vi. Straddling center lane,
- vii. Weaving or swerving across road,
- viii. Braking or stopping erratically or inappropriately,
- ix. Driving erratically or recklessly,
- x. Following too closely
- xi. Slow response to traffic signals,
- xii. Turning abruptly or illegally.
- xiii. Signaling inconsistent with driving actions.

2. Conditions: The following are some conditions that may indicate that a driver is impaired:

- i. Odor of alcoholic beverage,
- ii. Slurred speech,
- iii. Blood-shot eyes,
- iv. Dilated pupils,
- v. Incoherent behavior,
- vi. Presence of alcohol/drug containers.
- vii. Odor of cannabis

D. Pre-Arrest Screening Exercises:

- 1. **Request:** If a member has reason to believe that a driver may be impaired, the member may request that a driver take the standardized field sobriety exercises.
 - i. The exercises are to be conducted prior to making an arrest.

- ii. The member does not need to issue the driver a Miranda warning prior to the issuance of the exercises.
 - iii. Visually assess and inquire whether a driver has any disabilities that would affect the exercise results.
 - iv. Request an in-car camera, including microphone (if available) to film the exercises.
- 2. **Refusal:** The driver can refuse to take the exercises, and the member cannot compel the driver to take them. If there is a refusal, the officer will explain the purpose of the exercises and advise the driver of the consequences of not performing Field Sobriety Exercises. These adverse consequences include the possibility that the suspect can be arrested based on the available evidence and the subject's refusal can be used against him/her in court (Refer to LB 2015-21 Admissibility of FST Refusal).
- 3. **Location:** Members shall only conduct the exercises in a safe location, which is away from vehicle traffic and not between stopped or parked vehicles.
- 4. **Standardized Field Sobriety Exercises:** Members shall only administer exercises for which they have been properly trained and/or instructed. To detect impairment, members shall first determine whether the person has a physical or medical condition that would impede the field sobriety exercises. Such conditions may include eye disease, glass eyes, injured or artificial legs, back problems, etc. Medical conditions do not automatically preclude Field Sobriety Exercises but should be taken into account.
 - i. Members shall administer the standardized field sobriety exercises recognized by the National Highway Traffic Safety Administration (NHTSA). The list below is not an exhaustive list of approved exercises. The officer may use any exercises they are trained to administer, including but not limited to, the following exercises:
 - a. Horizontal Gaze Nystagmus
 - b. Walk-and-Turn,
 - c. One Leg Stand,
 - ii. For subjects who have medical or physical impediments to one or more of the NHTSA standardized exercises, members may administer one or more of the following recognized optional exercises:
 - a. Finger-to-Nose,
 - b. Hand Clap and Count
 - c. Fingertip-To-Thumb tip Count.
- 5. **Notes:** Members shall take detailed notes on the driver's actions regarding how exercises or, if not practicable, immediately following the exercises

E. Probable Cause: Based on the subject's driving and/or personal actions (to include field sobriety exercises, if driver submits), the member shall determine whether probable cause exists; if it does, the driver should be arrested. [61.1.2.a and 61.1.5a]

1. Physical control: To be arrested for DUI, a person must be driving a vehicle or be in actual physical control of it. Factors that indicate physical control can include:
 - i. Location of vehicle,
 - ii. Position of person in vehicle,
 - iii. Running or warm engine,
 - iv. Keys in ignition,
 - v. Headlights/taillights on,
 - vi. Brake-lights on.

F. Arrest Procedures:

1. If the driver is arrested, the arresting officer shall:
 - i. Read the arrestee the motor vehicle DUI Implied Consent if the driver indicated a refusal to testing. It is not necessary to read implied consent if the driver consents to a breath, blood or urine test;
 - ii. Arrange for disposition of the driver's vehicle using one of the following options [See G.O. 84.2 for Department tow procedures]:
 - a Give the vehicle (with driver/owner's permission) to a family member or friend who has a driver's license.
 - b Leave the vehicle secured, if legally parked.
 - c Tow the vehicle via contractual wrecker
 - 1) If held as prisoner property,
 - 2) If held as evidence pursuant to related (or unrelated) charges.
 - d Release the vehicle to a towing service of the driver's choice if the wrecker can respond in a reasonable amount of time.
 - iii. Transport the arrestee to the Gainesville Police Department, or any other available facility with breath or other appropriate chemical testing equipment.
 - iv. Leave the charging documents, (white copy of any criminal citations and the booking copy of the mittimus) with the booking-in staff at the Jail.
2. A person who is arrested for a DUI violation may not be released from custody:

- i. Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in FSS 877.111, or any substance controlled under Chapter 893 and affected to the extent that his or her normal faculties are impaired;
 - ii. Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; or
 - iii. Until 8 hours have elapsed from the time the person was arrested.
 3. Juvenile Arrest Procedures: Refer to General Order 44.3 Juvenile Arrests.
- G. Breath Testing:** After arresting the driver, members will arrange for the driver to be tested for breath alcohol content when conditions permit.
1. The transporting officer shall request that a Department breath-testing operator respond to the Gainesville Police Department breath test room or to the appropriate facility.
- NOTE: If no Department breath test operator is on duty, a member from another agency may perform the test.
1. Breath testing shall be administered only by an FDLE certified breath test operator.
 2. Miranda Rights do not need to be given prior to field sobriety exercises or chemical tests.
 3. Before a breath test can be administered, a subject must be observed for at least 20 minutes to ensure that the subject has not placed anything in his/her mouth, or has not regurgitated or vomited.
 4. If the test indicates a Breath Alcohol Content of greater than .08, the person's driver's license shall be confiscated.
- H. Urine:** If the officer suspects an arrestee is impaired due to drugs or other chemical substances, the officer may request a urine sample after administering a breath test. The urine test is performed in order to rule out or to compound which substances may have been consumed. The officer should attempt to contact a DRE (Drug Recognition Expert) officer, if available, prior to requesting a urine sample.
1. Collection Method: The urine sample shall be collected at the Police Department or other facility by a member of the same gender. Urine containers can be obtained from the agency's breath testing room.
 2. Submitting the Sample: The sample shall be placed into the refrigerator in the temporary evidence room, sealed with evidence tape and labeled with:
 - i. Arrestee's name,
 - ii. Date sample was collected,
 - iii. Initials of person who collected the urine,
 - iv. Case report number (See also GO 61.1, p 13, 2, i, and GO 1.3).

- v. A biohazard warning label.
- 3. Required Form: Complete and sign the FDLE Toxicology Services-Traffic Offense / DUI Cases Work Request Form, and
 - i. Place property voucher in the bin inside the evidence room.
 - ii. Enter urine sample as evidence in the property/evidence section of original report.
- 4. Analysis: Forensics Crime Unit personnel shall submit the sample to the FDLE lab for analysis.
- I. **Refusal to Submit:** If the offender refuses to submit to any chemical test(s), the offender's driver's license is automatically suspended for one year (or 18 months for a second refusal).
 - 1. The officer who read the subject the implied consent (usually the arresting officer) shall complete an Affidavit of Refusal to Submit to Breath, Urine, or Blood Test form, collect the person's driver's license, and submit it with the pink copy of the DUI citation or electronic DUI citation attached.
- J. **Blood Test:** For cases where blood is drawn, the member should not arrest the driver or submit an arrest mittimus; rather, complete a sworn complaint and forward it to the State Attorney's Office via Records. (This will enable the blood test analysis to be conducted and the results received from the FDLE lab without invoking the speedy trial rule.)
 - 1. Conditions:
 - i. Verification: Members should consult Florida State Statutes and a supervisor regarding additional conditions which may not be covered in this order but which may impact their actions and/or authority.
 - ii. General Conditions / Implied Consent [FSS 316.1932]: If reasonable cause exists that a driver is impaired, a blood test may be conducted when the driver appears for treatment at a medical facility (to include on or in a medical emergency vehicle) and the administration of a breath or urine test is impractical or impossible.

A person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn consent.
 - iii. Serious/Fatal Injury [316.1933]: When a person in physical control of a motor vehicle causes a death or serious bodily injury to any person, blood may be taken by consent or by obtaining a search warrant.

NOTE: Serious injury includes that which creates a substantial risk of death, disfigurement or protracted loss or impairment of the function of any bodily organ or member. Injury to 'any person' includes the [potentially] impaired driver.
 - 2. Blood Kits: Blood sample collection kits may be obtained from patrol shift offices.

3. Request Form: To request blood to be drawn, a Request for Blood form and Certificate of Blood Withdrawal form must be completed. These forms can be found on the GPD Intranet forms library.
 4. Method: Only the following people are authorized to draw blood for the purpose of testing blood alcohol content: physician, certified paramedic, registered nurse, licensed practical nurse, licensed laboratory director, supervisor, technologist, or technician, or any personnel authorized by a hospital to draw blood.
 5. Labeling: The blood kit shall be sealed with evidence tape and labeled with:
 - i. Arrestee's name,
 - ii. Date sample was collected,
 - iii. Case report number.
 - iv. Biohazard label
 - v. Paperwork included in the blood kit
 6. Storage: The blood sample containers shall be placed into the refrigerator in the temporary evidence room.
- K. Miranda Rights:** Read the arrestee the Miranda rights before asking any incriminating questions, conducting an interview, or completing an Alcohol Influence Report.
- L. Documents:** The arresting member shall complete or collect the following documents:
1. Complete an RMS incident report shell to include
 2. Complete the GPD DUI Report (GPD Form [Packet] #249), to include:
 - i. Suspect's driving actions,
 - ii. Suspect's behavior and statements,
 - iii. Suspect's performance on the field sobriety exercises,
 - iv. Vehicle's condition and other physical evidence,
 - v. Results of chemical tests,
 - vi. Suspect interview.
 3. Chemical test documents, to include:
 - i. FDLE form 38, Breath Alcohol Test Affidavit
 - ii. Refusal (if applicable)

4. Attachments (Refusal to Submit Affidavit, mittimus, Alcohol Influence Report (2 Pages), DUI Citation shall be listed in the narrative section of the incident report (e.g., DL, DUI citation, breath-test documents, etc., as applicable).
5. An 'Investigative Expense Summary - Restitution Recoverable Per FSS 939.01' Form (GPD 212) shall be completed for and included with all DUI investigations.
6. If any other criminal charges result from the DUI arrest, (e.g. possession of cocaine, drug paraphernalia, etc.) these charges will be listed in the 'Offenses' section in the incident report and shall be included in narrative format in the incident report.

M. Traffic Citations: Members shall complete the applicable civil and/or criminal traffic citations. The following shall occur regarding charging DUI:

1. **DUI Traffic Citation:** Shall be used when charging a person with DUI when the person's breath alcohol level is in excess of .08, or if the arrestee refuses to submit to chemical testing.
2. **Uniform Traffic Citation:** Shall be used when arresting for DUI with a BAC of .08 or less.
3. **No Citation:** Members shall complete, but SHALL NOT issue criminal citations charging DUI if the chemical test is being conducted via a blood sample. (See Section J).

The citing member shall attach the completed citation, noting 'To Be Served' in the court-date section, and attach it to the related sworn complaint.

The State's Attorney's Office will set the dates for the related actions.

4. **Court Dates:** On all DUI or Uniform Traffic Citations charging DUI, the court date shall indicate 'To Be Assigned'.

N. Confiscating the Driver's License: When a subject is arrested for DUI and has a breath alcohol level in excess of .08, or refuses to give a breath, blood or urine sample, the subject's DL shall be confiscated and attached to the pink copy of the citation.

The yellow (defendant's if handwritten or a printed copy of the electronic citation) copy of the citation shall serve as a temporary 10-day driving permit, if eligible.

O. Mittimus: A mittimus outlining the probable cause shall be completed for any cases involving a DUI arrest. The narrative statement in the mittimus shall serve as the investigative report narrative. (The narrative section of the original incident report may say "See DUI packet).

1. For cases where blood is drawn, complete a sworn complaint (rather than make an arrest) and forward it to the State Attorney's Office via Records. (This will enable the blood test analysis to be conducted without invoking the speedy trial rule.)
2. Include all driver actions and civil infractions for which citations were issued in the probable cause statement.

3. Include all elements and actions in the probable cause statement pertaining to criminal charges subsequent to the DUI stop/arrest.
 4. Property voucher: Complete a property voucher for any items of property (to include chemical samples) submitted as evidence.
- P. Submitting Entire Packet:** Records, forms, citations, and reports shall be submitted to a supervisor for review and then forwarded to the Records Section upon approval.
- Q. Impound Pursuant to Qualifying DUI Arrest:** A motor vehicle driven by a person under the influence of alcohol or drugs in violation of ss. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.7062, and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 IF, if, at the time of the offense, the person's driver license is suspended, revoked, or canceled, or suspension or revocation equivalent status was imposed, as a result of a prior conviction for driving under the influence ss. 322.34(9)(a). Department members shall refer to the procedures set forth in G.O. 40.20 Seizure and Forfeiture of Property.

By Order of

*Signed Original on File in the
Accreditation Unit*

**Nelson Moya
Chief of Police**