



# TALLAHASSEE POLICE DEPARTMENT GENERAL ORDERS

 Proudly Policing Since 1841	<b>SUBJECT</b>  Impaired Driving Enforcement		 Nationally Accredited 1986
	<b>CHIEF OF POLICE</b>  <i>Signature on File</i>		
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## AUTHORITY/RELATED REFERENCES

Florida Statutes 316.193 – 316.1934, Driving Under the Influence  
 Florida Statutes 322.2615 – 322.2616, Suspension of License  
 Florida Administrative Code 11D-8, Implied Consent Program  
 FTEP 10, Field Training Guide  
 General Order 11, Communicable Disease Control  
 General Order 32, Juvenile Procedures and Programs  
 General Order 42, Impounding and Controlling of Property and Evidence  
 General Order 60, Response to Resistance  
 General Order 64, Vehicle Impounding  
 General Order 76, Traffic and Parking Enforcement

## ACCREDITATION REFERENCES

CALEA Chapter 61

## KEY WORD INDEX

<b>DUI – Blood Tests</b>	Procedure IV
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## POLICY

Recognizing the inherent dangers of operating a motor vehicle while under the influence of drugs or alcohol, the Department will proactively enforce Florida Statutes regarding impaired drivers and underage drinking and driving. Officers are responsible for adhering to established protocols in the enforcement of Florida

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Statutes regarding impaired drivers and underage drinking and driving.

### DEFINITIONS

**Actual Physical Control:** A person who is in or on a vehicle and has the capability to operate it (e.g., a person asleep in the driver's seat of an idling vehicle with his foot on the brake is deemed to be in actual physical control of the vehicle).

**Driver:** A person who drives or is in actual physical control of a vehicle on a highway, or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle.

**DUI:** The crime of Driving Under the Influence.

**Motor Vehicle:** Any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or tracks, and specifically excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles.

**Serious Bodily Injury:** An injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any body member or organ.

**Underage Drinking and Driving:** The term used in this policy to describe FS 322.2616 which makes it 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.

**UTC:** Uniform Traffic Citation.

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

### PROCEDURES

#### I. DUI DETECTION AND ARREST PROCEDURES

- A. Whenever an officer encounters a driver whose normal faculties appear impaired by alcoholic beverages or controlled substances the officer shall conduct an investigation to determine if the person was driving or in actual physical control of a vehicle while under the influence.
- B. Officers should be able to recognize the behaviors or clues often exhibited by a person who is driving while under the influence of alcohol and/or drugs, such as:

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1. Straddling the center lane or lane marker, or driving into opposing or crossing traffic.
  2. Turning with a radius greater than normal, or turning abruptly.
  3. Almost striking an object or vehicle,
  4. Weaving, drifting or swerving,
  5. Stopping without cause in a traffic lane, or braking erratically.
  6. Following too closely, or accelerating or decelerating rapidly.
  7. Signaling inconsistent with driving, or driving with headlights off.
  8. Slow response to traffic signals, or driving on other than a designated roadway.
- C. Once a driver is contacted, the officer should make observations which may provide reasonable suspicion of the driver's impairment from alcohol or drugs, such as:
1. Open containers of alcohol in the vehicle.
  2. Driver has a strong odor of an alcoholic beverage.
  3. Driver has bloodshot and/or watery eyes.
  4. Driver has slurred speech.
  5. Driver has difficulties in locating a driver's license/vehicle registration.
  6. Driver avoids any conversation or eye contact.
  7. Driver promptly lights a cigarette or chews gum.
- D. Once a driver is contacted and the officer has reasonable suspicion the person has consumed alcohol and/or drugs, field sobriety exercises (FSEs) should be conducted.
- E. Sworn officers who have successfully completed appropriate training are authorized to conduct FSEs. This training includes but is not limited to: training provided as part of the Florida Basic Recruit Training Program (or Equivalency of Training); the Department's Field Training & Evaluation

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Program, the National Highway Traffic Safety Administration's 24-hour Basic Standardized Field Sobriety Testing, etc.

- F. FSEs include but are not necessarily limited to: Horizontal Gaze Nystagmus, Walk and Turn, and One-Leg Stand.
- G. After completing FSEs, the officer should form an opinion about whether the driver's normal faculties are impaired.
  - 1. If probable cause does not exist to indicate a driver is impaired, the person should not be detained further unless the officer needs to continue investigating other traffic or criminal violations.
  - 2. If probable cause exists to indicate a driver is impaired, the person should be arrested.
- H. Whenever an officer encounters a driver who demonstrates indications of impairment of their normal faculties, the officer shall check the driver for medical alert identification:
  - 1. The identification may be in the form of an ID card, bracelet, or necklace.
  - 2. The officer shall ensure the person receives appropriate medical attention if the person possesses such identification.
- I. For all DUI arrests, officers are responsible for submitting the arrest packet in a manner as directed by the DUI Coordinator within two (2) calendar days of the arrest. The arrest packet will contain a combination of the following documents:
  - 1. Probable Cause Affidavit [CJIS Booking Form]
  - 2. Breath/Urine/Blood Test Affidavit (or refusal) [TRACS]
  - 3. [Uniform Alcohol Influence Report](#) [SharePoint, Forms]
  - 4. Charging Document (DUI Citation and/or Criminal UTC) [TRACS]
  - 5. Other UTCs (if applicable) [TRACS]
- J. Officers are responsible for handling an arrestee's vehicle in accordance with [General Order 64 \(Vehicle Impounding\)](#).

## II. DUI CHEMICAL BREATH AND URINE TEST PROCEDURES

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- A. The chemical breath test is the primary test to be offered after a person has been arrested for driving under the influence.
- B. All breath tests shall be conducted with instruments approved by the Florida Department of Law Enforcement (FDLE) for alcohol testing.
- C. Only officers who have successfully completed the appropriate FDLE training for breath test operators, and possess a valid permit, are allowed to operate evidentiary breath test instruments.
- D. Officers shall conduct breath testing in accordance with applicable rules as outlined in the Florida Administrative Code.
- E. Breath test officers shall complete the breath test forms required by the FDLE Alcohol Testing Program.
- F. The arresting officer is responsible for ensuring the [TPD Alcohol Influence Report \(PD 398\)](#) is completed and appropriately submitted.
- G. When the breath test officer is not the arresting officer, the breath test officer shall include in the PD 398 any indicators of impairment they observed during their contact with the arrestee (in the “notes and observations and/or breath test officer summary” area).
- H. Officers administering a breath test on a DUI arrestee who is 18 years of age or older shall administer the test with an approved evidentiary breath test instrument. The breath test may be administered on the scene of the investigation (if the approved breath test instrument is mobile) or at the Leon County Detention Facility.
- I. In addition to the breath test, a chemical urine test may be conducted if the driver is suspected of being impaired from the consumption of drugs, and the driver’s breath test results are:
  - 1. Under .08, and
  - 2. Are not consistent with the officer’s observations of the arrestee’s apparent impairment level.
- J. If a breath and/or urine test is practical and possible, the officer shall offer the appropriate chemical test to the arrested driver:
  - 1. If the arrestee submits to the test, the officer shall proceed with the test(s) and include the results in the probable cause affidavit.

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2. If the arrestee refuses to submit to the test, the officer shall read the Florida Implied Consent Law (from the Implied Consent Form) to the person, and again offer the test.
  3. If the arrestee submits to the test after the reading of Implied Consent, the officer shall proceed with the test(s) and include the results in the probable cause affidavit.
  4. If the arrestee continues to refuse submission to the test, the officer shall complete the other tasks in the DUI investigation and include the person's refusal in the probable cause affidavit.
- K. Officers receiving a urine sample shall follow procedures for handling bodily fluids as outlined in [General Order 11 \(Communicable Disease Control\)](#).
- L. The procedures for receipt of a urine sample are as follows:
1. Only a specimen cup or container designed for urine may be used to receive a sample for testing.
  2. The specimen cup must be capable of being sealed and secured to prevent leakage.
  3. The arrestee must be advised of Implied Consent before providing a urine sample.
  4. The arrestee will be provided a specimen cup and asked to provide a sample of urine for the purpose of determining drug content.
  5. To ensure the sample is produced by the arrestee, at least one officer shall witness the person provide the sample:
    - a. The witness officer(s) and arrestee must be of the same gender.
    - b. In circumstances where the arrestee self-identifies as transgender, the officer(s) witnessing the provision of a urine sample shall be of the stated gender identification of the arrestee.
    - c. The arrestee shall be afforded reasonable privacy to provide the sample.
  6. The specimen cup must be marked with the arrestee's name, initials of the officer receiving the sample, the date and time the sample was received, and the case number of the incident.

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7. The sample must be sealed and impounded as directed in [General Order 42 \(Impounding and Controlling of Property and Evidence\)](#) for bodily fluids, and be forwarded as soon as possible to the FDLE Crime Laboratory for analysis.
- M. If an arrestee submits to a test of their breath, an officer may not interfere in the arrestee's efforts to obtain an independent blood test at their own expense:
1. When the arrestee is attempting to obtain an independent test, the officer is only obligated to provide a functioning telephone and current telephone book.
  2. Officers are not required to transport an arrestee to a medical facility for the sole purpose of obtaining an independent test.
  3. Once a DUI arrestee has been booked into the detention facility or receiving center, correctional officers must be notified of an arrestee's request for an independent blood test.
  4. An arrestee is only eligible for an independent blood test if they have provided the required breath samples.
- N. When charging a person with DUI, officers are responsible for utilizing the appropriate Florida DUI Uniform Traffic Citation (HSMV 75904) or Florida Uniform Traffic Citation (HSMV 75901), and taking the appropriate action, as follows:
1. When the breath test results are at least .08 grams alcohol per 210 liters of breath or the arrestee refuses to submit to a lawful breath and/or urine test, the person shall be charged using a Florida DUI Uniform Traffic Citation and shall be incarcerated. (If additional counts of DUI are being charged, subsequent counts will include associated citations issued on Florida Uniform Traffic Citations.)
  2. When the breath test result is less than .08 the arrestee shall be charged using a Florida Uniform Traffic Citation and should be incarcerated.
  3. When the officer is awaiting urine test results, the person shall be charged using a Florida Uniform Traffic Citation and should be incarcerated if there is probable cause.

### III. BREATH TESTING AND BOOKING PROCEDURES FOR JUVENILES

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

- A. Officers administering a breath test on a DUI arrestee under 18 years of age shall administer the test on the scene of the investigation with an approved evidentiary breath test instrument.
- B. If an evidentiary breath test instrument is unavailable at the scene of the investigation, the officer shall transport the juvenile to the Leon County Jail for administration of the breath test, and shall adhere to the following protocols:
  - 1. The officer must make notification to the intake supervisor prior to arrival at the facility, alerting the supervisor a juvenile is being brought there for breath testing.
  - 2. The juvenile, regardless of gender, shall be escorted through the female intake area, and be delivered directly to the breath test room.
- C. After the breath test portion of the DUI investigation is completed, the arresting officer is responsible for remaining in contact with the juvenile until delivered to the Juvenile Assessment Center (JAC), ensuring the following medical clearance and booking protocols are adhered to:
  - 1. The juvenile is transported to a medical facility and evaluated by a physician,
  - 2. A written medical clearance form is obtained from the attending physician,
  - 3. Once examined by a physician, and the medical clearance form obtained, the juvenile is transported to the JAC, and
  - 4. The medical clearance document is provided to the JAC intake officer at the time of processing.
- D. Officers are not authorized to release a juvenile DUI arrestee from custody, and must deliver the juvenile to the JAC so their staff can complete booking, parent/guardian contact, detention criteria assessment, and any post-booking transportation.

#### **IV. DUI CHEMICAL BLOOD TEST PROCEDURES**



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- A. When a breath test is impractical or impossible to obtain, an officer is authorized to request a blood sample for the purpose of testing for alcohol or drug content only when:
1. There is probable cause to believe the suspect is impaired, and
  2. The suspect is at a medical facility for medically necessary treatment (NOT merely for medical clearance).
    - a. An ambulance qualifies as a medical facility for the purpose of obtaining a blood sample for alcohol or drug content testing.
    - b. A blood sample for the purpose of determining alcohol or drug content must be taken only at an actual medical facility or in an ambulance.
- B. Officers are responsible for ensuring blood samples are taken using an approved FDLE legal blood kit, and the following protocols:
1. The DUI [Blood Draw Packet \(PD 125, FDLE/ATP Form 11, Florida Implied Consent Warning\)](#) shall be completed when requesting a blood sample.
  2. The expiration date of the blood vials utilized must not have been reached.
  3. The suspect's skin must be cleaned only with a non-alcoholic antiseptic solution prior to the blood sample withdrawal.
  4. The officer must witness the withdrawal of the blood from the suspect.
  5. Each 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.
  6. The vials containing the blood sample must be inverted by the receiving officer several times to ensure the vials' anti-coagulant is mixed.
  7. The blood/blood vials must not be exposed to extreme heat.
  8. The officer must ensure each blood vial is:
    - a. Sealed and placed in its protective container,

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- b. Impounded/refrigerated in the Property and Evidence Unit as soon as possible, and
    - c. Accompanied by an appropriately completed Property and Evidence Receipt (PD 139) and a Request for Analysis (PD 140).
  9. The medical technician conducting the blood draw must complete the FDLE/ Alcohol Testing Program (ATP) Form 11 (Certification for Blood Withdrawal).
  10. The officer is responsible for ensuring all assigned case numbers are written on each required form (e.g., PD 125, FDLE/ATP Form 11, Florida Implied Consent Warning).
  11. The DUI Blood Draw Packet shall be submitted to the Records Section as part of the DUI packet if a blood draw was conducted.
- C. When the blood test results 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, a Traffic Unit member (or sworn designee) shall submit the information appropriately to seek a warrant for the arrest of the DUI suspect.
- 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 determining probable cause to request a legal blood withdrawal based upon current statutory and case law guidelines.
- E. Although an arrest for DUI should not be made until after the test results from a legal blood withdrawal have been received, if circumstances require charges be made prior to receipt of the test results (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. If the DUI suspect refuses to provide a blood sample, the officer should arrest the person at the time of the refusal **only** when:
1. Based upon the totality of the investigation probable cause exists to support the DUI charge, and
  2. No other criminal charges related to the incident are pending (e.g., traffic homicide), and
  3. The amount of time the officer will have to wait for the suspect to be released/discharged (from an ambulance/medical facility) is

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reasonable (note: the reasonableness shall be based upon factors such as shift staffing and calls for service demand).

- G. In situations where the DUI suspect refused to provide a blood sample and was not arrested, the officer is responsible for sending an e-mail notification to the Traffic Unit ("TPD Traffic Unit") providing the case number and requesting follow-up.
- H. If the DUI suspect is physically unable to respond to the request for a legal blood draw (e.g., sedated, unconscious) and the associated incident does NOT involve serious bodily injury or death, the decision to conduct a blood draw will be made based upon current statutory and case law guidelines.
- I. If a driver has caused a traffic crash which resulted in a serious bodily injury or death to another person, and probable cause exists to believe the suspect is impaired from the consumption of alcohol and/or drugs, the request for a blood sample shall be conducted as allowed by current statutory and case law guidelines.
  - 1. If the suspect verbally refuses to submit to a blood test, or consciously refuses to answer, and absent any other exigency, the officer shall document the refusal and seek assistance in obtaining a search warrant from the on-call Leon County Judge.
  - 2. If the suspect is unconscious, or is physically unable to respond to the request, (e.g., sedated), the decision to conduct a blood draw will be made based upon current statutory and case law guidelines.
  - 3. Force shall not be used to obtain a blood sample without a signed warrant.
  - 4. Once a warrant has been obtained, only the minimum amount of force necessary to gain compliance is to be used.
  - 5. In the event force must be used to secure a blood sample, the officer shall document the force used in compliance with General Order 60 (Response to Resistance).

### **V. UNDERAGE DRINKING AND DRIVING INVESTIGATIONS**

- A. A violation of FS 322.2616 (Underage Drinking and Driving) is neither a traffic infraction nor a criminal offense.
  - 1. Violation of FS 322.2616 is an administrative action of the Florida Department of Highway Safety and Motor Vehicles (DHSMV).

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2. The lawful detention for an investigation for a violation of FS 322.2616 does not constitute an arrest.

### B. Investigation Protocols

1. When encountering a person under 21 years of age in actual physical control of a motor vehicle who is suspected of having consumed alcoholic beverages, an officer should initiate a standard criminal DUI investigation.
2. If probable cause is established that the person is operating a vehicle while DUI, the officer shall take the appropriate enforcement action.
3. When DUI or a medical emergency have been ruled out, the officer shall determine if the driver is operating the vehicle in violation of FS 322.2616.
4. Officers conducting an Underage Drinking and Driving investigation shall ensure the following occur:
  - a. Verifying the driver is under 21 years of age.
  - b. Establishing probable cause to believe the driver has consumed any amount of alcoholic beverage.
  - c. Informing the driver of the following:
    - 1) An Underage Drinking and Driving investigation is proceeding,
    - 2) A field breath test is requested and required by FS 322.2616,
    - 3) If the breath test indicates .02 grams alcohol (or higher) per 210 liters of breath, their driver's license will be suspended for a period of at least six months, and
    - 4) If the breath test is refused, it will result in a suspension of their driver's license for at least one year.
  - d. Conducting a 20-minute observation period:
    - 1) The officer shall instruct the driver to remove any foreign substances (e.g., gum, tobacco products) from their mouth and to not consume any substance or introduce any object or substance orally.

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- 2) The observation period begins once the officer has ensured the driver does not have any foreign substance in their mouth.
  - 3) The officer shall watch the driver continuously throughout the observation period to ensure the driver does not place any foreign substance into their mouth, and for any indication of regurgitation.
- e. After the observation period has passed, administering the breath test with a Portable Breath Test unit (PBT):
- 1) Two breath samples should be obtained at least one minute apart and no more than 15 minutes apart.
  - 2) In the event only one sample is obtained due to refusal to provide a second sample, the results from the single sample may be used for enforcement purposes.
  - 3) Refusal of a second sample is deemed a refusal (resulting in a one-year suspension of the person's driving privileges).
5. If any of the breath samples yield a breath alcohol level of .02 grams alcohol (or higher) per 210 liters of breath, or if the driver refuses to provide a breath sample, the officer shall:
- a. Seize the person's driver's license, and
  - b. Issue a suspension using a Notice of Suspension (HSMV 78103).
6. If any of the breath samples yield a breath alcohol level of .08 grams alcohol (or higher) per 210 liters of breath, and probable cause for a DUI arrest was not established based on FSEs, an arrest for DUI based solely on the PBT results shall not be made.
- a. Since the PBT is not an approved evidentiary device, its results cannot be admitted into court as evidence for a DUI charge.
  - b. The results received from the PBT may be used only for administrative proceedings by the DHSMV for purposes of enforcement of Underage Drinking and Driving.
  - c. Enforcement is limited to the issuance of a suspension of driving privilege in accordance with FS 322.2616.
7. Officers may use serum or legal blood results for conducting Underage Drinking and Driving investigations:

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- a. In the event any blood test results indicate a driver under the age of 21 years had a blood alcohol content of at least .02 grams (or higher) alcohol per 100 milliliters of blood, the officer may issue a notice of suspension of the person's driving privileges in accordance with FS 322.2616.
- b. A notice of suspension under FS 322.2616 is not required whenever a notice of suspension is issued under FS 316.193 for DUI (and the charge is made on a Florida DUI UTC) for a blood test result of .08 grams alcohol (or higher) per 100 milliliters of blood.

### C. Documentation Procedures

1. Officers taking suspension action for Underage Drinking and Driving shall complete:
  - a. A Notice of Suspension (to include the probable cause affidavit and the PBT Result Affidavit or Breath Test Refusal Affidavit, if applicable), and
  - b. An "FIR" offense report, detailing at minimum:
    - 1) The reason for making contact with the driver,
    - 2) Indicators of impairment (or lack thereof) during personal contact,
    - 3) Indicators of impairment (or lack thereof) during FSEs (if conducted), and
    - 4) How the driver was identified as being under 21 years of age.
2. The officer shall forward the Notice of Suspension to the DUI Coordinator for submittal to the DHSMV.
3. A driver cannot be arrested for willfully refusing to accept and sign a Notice of Suspension. In such instances, the officer shall:
  - a. Indicate the driver's refusal on the notice, and
  - b. Provide the driver a copy of the notice.
4. Driver's licenses seized for Underage Drinking and Driving must be attached to the Notice of Suspension.

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5. Whenever a person under 21 years of age is charged with DUI and a UTC is issued in lieu of a DUI UTC (due to a breath test result under .08 and higher than .02), a Notice of Suspension should be issued in conjunction with the citation.

### D. Disposition of the Driver

Upon issuance of a citation for a violation of FS 322.2616, the officer is responsible for the following concerning the disposition of the driver:

1. Because the person's driving privilege is immediately suspended upon issuance of the Notice of Suspension for Underage Drinking and Driving, the officer shall not allow the person to operate a motor vehicle to leave the scene.
2. When the person is under 18 years of age, and is not in need of medical treatment, the officer shall take the juvenile into protective custody and deliver them to a responsible adult/guardian.
3. When the person is between 18 and 21 years of age, and is not in need of medical treatment, the officer shall ensure reasonable arrangements are made for the person to be delivered to a responsible person.

## VI. PORTABLE BREATH TEST UNIT

- A. Officers are authorized to utilize only Department-issued PBTs.
- B. Only PBTs approved by the Chief of Police, or designee, are authorized for Department utilization.
- C. Officers shall utilize the PBT only for the investigation of Underage Drinking and Driving and for other legitimate law enforcement purposes approved by the Chief of Police or designee, such as:
  1. Checking the breath alcohol content of an arrestee to determine if the Leon County Jail will accept the prisoner.
  2. Determining if a person is in violation of the terms of their probation.
- D. The PBT operator must follow the manufacturer's procedures for conducting all breath tests.
- E. All PBT units shall be serviced and have their accuracy certified bi-annually.

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- F. Only FDLE certified Agency Inspectors shall perform service, including calibration/certification, on the evidentiary breath test instruments and PBTs used by the Department.
- G. The DUI Coordinator will maintain a PBT service log for each unit for at least two years after each breath test.

History: previous title (*drinking and driving/underage drinking and driving*) – issued 05/13/1998, revised 05/15/2003, 04/10/2013 (*change of title*), 02/24/2016, and 03/20/2017.