


FLORIDA HIGHWAY PATROL POLICY MANUAL

	SUBJECT ENFORCEMENT POLICY	POLICY NUMBER 17.06
		ISSUE DATE 02/01/96
		REVISION DATE 10/16/17
		TOTAL PAGES 14

17.06.01 PURPOSE

To provide guidelines to assist Division of Florida Highway Patrol members in enforcing the laws of the State of Florida.

17.06.02 AUTHORITY

Authority for this policy is derived from Sections 316.640, 316.645, and 901.15, Florida Statutes.

17.06.03 POLICY

It is the policy of the Florida Highway Patrol to allow its members appropriate latitude in determining types of enforcement action to be taken. Traffic law enforcement is a primary responsibility of the Florida Highway Patrol. Members should take the enforcement action that they deem necessary to ensure the safety of the motoring public, reduce the number and severity of traffic crashes and reduce the number of criminal acts committed on the highways of this state.

This policy will serve as a guideline to promote uniformity statewide as well as specify types of enforcement action required or prohibited for certain violations of the law. In addition, specific enforcement action may be dictated by the Division for special enforcement campaigns.

Pursuant to Section 316.640, Florida Statutes, traffic citation quotas are prohibited. Supervisors **WILL NOT** establish or impose any type of traffic citation quota. Members will not be evaluated, promoted, compensated or disciplined based on any type of traffic citation quota. However, there is an expectation that members will provide high visibility and proactive enforcement while performing their assigned duties.

17.06.04 DEFINITIONS

- A. **DUI CITATION** – The DUI Uniform Traffic Citation (HSMV 75904) which is hand-written or generated using the Mobile Data Computer (MDC).
- B. **ENFORCEMENT ACTION** – Includes custodial arrests, or the issuance of Notices to Appear, Uniform Traffic Citations, Written Warnings or Faulty Equipment Notices.

- C. **NOTICE TO APPEAR** – A charging document used in making a criminal charge when the defendant is to be released without being transported to a booking facility. The document has a place for the defendant to sign promising to appear in court to answer to the charge. The Uniform Traffic Citation is used for this purpose in criminal traffic cases.
- D. **QUOTA** – A specific number of traffic citations required during a specific time period.
- E. **UTC** – The Uniform Traffic Citation (HSMV 75901) which is hand-written or generated using the Mobile Data Computer (MDC).
- F. **DUI CITATION** – The DUI Uniform Traffic Citation (HSMV 75904) which is hand-written or generated using the Mobile Data Computer (MDC).
- G. **WRITTEN WARNING/FAULTY EQUIPMENT NOTICE** – Documentation of non-punitive enforcement action taken by a member for minor traffic violations.
- H. **0.02 ZERO TOLERANCE CITATION** – The Zero Tolerance Citation (HSMV 78103), which is hand-written.
- I. **0.04 COMMERCIAL VEHICLE DISQUALIFICATION** – The Commercial Vehicle Citation (HSMV 78005), which is hand-written.

17.06.05 RESPONSIBILITIES

It is the responsibility of every member to be familiar with Sections 316.645 and 901.15, Florida Statutes, as they relate to the arrest authority of police officers.

17.06.06 PROCEDURES

A. ENFORCEMENT ACTIONS

In general, members who initiate a traffic stop or investigate a traffic crash or other crime, shall take and document appropriate enforcement action as outlined below. All traffic stops shall be documented on the Traffic Stop Data Report as required by FHP Policy 13.06 – Traffic Stop Data Collection.

1. Faulty Equipment Notices are to be issued in cases of minor faulty equipment violations outlined in Section 316.610(2), Florida Statutes. In addition, Faulty Equipment Notices may be utilized to require individuals to renew registration or driver licenses that may have recently expired, or to affect a change of address on a registration or driver license.
2. Written Warnings may be issued in cases where minor traffic violations are observed. Written Warnings are not to be issued in the following situations:
 - a. For driver license violations.

- b. For faulty equipment violations.
 - c. In traffic crash cases.
 - d. Any criminal offense.
 - e. For child restraint violations.
3. Uniform Traffic Citations (UTC) and DUI Citations
- a. The UTC or DUI citation will be completed on all traffic related charges.
 - (1) The DUI citation is to be issued only for a DUI arrest when the driver's blood alcohol level is 0.08 or higher or when the driver refuses to take a blood, breath or urine test. The UTC is to be issued for a DUI arrest when the driver's blood alcohol level is less than 0.08.
 - (2) When seeking a capias for a DUI arrest and the blood results reveal a 0.08 or higher, a DUI citation must be used. If the blood results are below a 0.08 and/or drugs, a UTC must be used.
 - (3) If a physical arrest is being made, using toxicology results from a lab and/or hospital and the blood results are a 0.08 or higher, a DUI Citation must be used. If the blood results are below a 0.08 and/or drugs, a UTC must be used.
 - (4) Whether a DUI Citation or UTC is being issued, the date of the traffic crash or traffic stop must be documented on the citation, as well as the date of arrest.
 - (5) When issuing a DUI Citation from a traffic crash, the most serious charge for DUI shall be used (For example; DUI Property Damage, DUI Injury or DUI Serious Bodily Injury). Additional DUI charges shall be charged using a UTC.
 - (6) When issuing a DUI Citation, the member must notify the arrestee that the DUI Citation is their notice of suspension for the driver's license.
 - b. When a violator is being issued a UTC and has failed to display a driver's license, the right thumbprint of the violator shall be imprinted on the back of the Court Complaint copy of the hand-written UTC, or collected electronically by use of the Rapid ID Device. If the UTC is generated using the MDC, the right thumbprint will be imprinted on the front of the Court Complaint copy. If an

amputation or other condition renders it impossible to obtain the right thumbprint, the left thumbprint or a fingerprint may be obtained in lieu of the right thumbprint. In such a case, a notation identifying that a left thumb/finger was printed and the reason the finger/left thumb was printed, shall be included near the fingerprint area on the Court Complaint copy of the UTC.

- c. A separate UTC must be completed for each violation or each count of a violation.
 - d. A court appearance is required on all criminal charges. In addition, any infraction including, but not limited to those which result in a crash causing death or serious bodily injury to another person; any violation of Sections 316.183(2)/ 316.187/316.189 (Exceeding the Speed Limit by 30 mph or more), 403.413(6)(a) (Florida Litter Law), 316.172(1)(b) (Failure to Stop for Stopped School Bus), and 316.520(1) or (2) (Loads on Vehicles), Florida Statutes.
 - e. Requirements and options for satisfying or answering to the charges shall be given to the violator prior to release. This information is unique to each county and should include, but not limited to; whether a court appearance is mandatory or optional, along with the court appearance schedule, and whether the violator is allowed to enter a plea and/or pay a fine by mail or at the traffic violations bureau. The clerk of the circuit courts office will be contacted for specific procedural requirements.
 - f. Members are to deliver traffic infraction citations to the defendant personally. If the defendant resides outside of the member's district or county of assignment, the United States Postal Service (U.S.P.S.) may be utilized to deliver the UTC to the defendant. However, such use of the U.S.P.S. will be in accordance with procedures established by the Clerk of the Circuit Court.
4. Notice to Appear
- a. The Notice to Appear may be used for misdemeanor violations in lieu of a custodial arrest. In no instances is it permissible to issue a Notice to Appear for any DUI charge or any felony charge.
 - b. The member should take into consideration the seriousness of the violation, whether the suspect has been positively identified, and whether the violation is one that requires a custodial arrest.

- c. Specific guidelines may be set by local courts, state attorneys or booking facilities. When such guidelines conflict with this policy, the District Commander will meet with the affected agency to present the aims of the Division policy and attempt to mediate a resolution. Any deviation from Division policy to satisfy local guidelines must be documented in the form of a local directive.
- 5. Custodial Arrests
 - a. Custodial arrests are required for all on scene DUI charges and felony charges. Custodial arrests cannot be made for any violation that is classified as a traffic infraction.
 - b. Custodial arrests are required for outstanding confirmed warrants. If the agency issuing the warrant is located in another county or state, the issuing agency must be willing to extradite the arrested person.
 - c. Custodial arrests may be made for other misdemeanor violations. Members should refer to the sections on issuing a Notice to Appear and enforcement guidelines of this policy.
 - d. Persons arrested and taken into custody will be released to another officer or agency, or will be incarcerated in an authorized holding facility. Arrested persons who are on Division premises will be under the continuous supervision and control of the arresting member or a designated member. Applicable procedures set forth in FHP Policy 22.12 and 22.13 shall be closely followed.
 - e. Members making custodial arrests of juveniles will adhere to Chapter 985, Florida Statutes, and FHP policies regarding juvenile offenders.

B. ENFORCEMENT GUIDELINES

- 1. Driving Under the Influence of Alcohol or Drugs
 - a. Whenever practicable, a person determined to be driving under the influence of alcohol or drugs will be taken into custody and be delivered to the county jail for booking. In no instances will it be permissible to issue a Notice to Appear for a DUI charge.
 - b. Arrest and processing of DUI suspects will be in accordance with the FDLE Implied Consent Program (Chapter 11D-8, Florida Administrative Code) and procedures established by the DHSMV, Bureau of Administrative Review related to administrative suspensions.

- c. A DUI suspect does not have the right to refuse to submit to a required chemical/physical test by demanding an independent test first. The member is required to assist the DUI suspect in obtaining an independent test as stated below (d), but ONLY after the suspect has complied with the test requested by the member.
 - d. Pursuant to Section 316.1932, Florida Statutes, the member shall not interfere with the suspect's opportunity to obtain the independent test and shall provide the suspect with timely telephone access to secure the test, but the burden is on the suspect to arrange and secure the test at his/her own expense. The member is not obligated to provide transportation for the DUI suspect to obtain the independent test. If the suspect has been turned over to the sheriff's office or corrections, it will be their responsibility to provide the suspect the assistance required by law to obtain an independent test.
2. Driving While License is Suspended or Revoked
- a. A UTC should be issued, and if the violation is of a serious nature, a custodial arrest should be made.
 - b. Members should consider the number and types of previous suspensions and revocations in determining whether a custodial arrest is appropriate.
 - c. Members will not allow any person whose driver license is not valid or who does not possess a driver license to operate a motor vehicle. Members will assist any such person in obtaining alternate transportation from the scene or locating a properly licensed driver to assume control of the motor vehicle.
 - d. In the event a member seizes a Florida driver license for any violation involving a confirmed suspension, revocation, disqualification or cancellation, the driver license will be destroyed by shredding unless such license is considered evidence in a criminal case and is entered into the appropriate evidence/property room per policy. At the conclusion of the case the license will be shredded to adhere to this policy.
 - (1) If driver license fraud is suspected, or the driver license is lost property or evidence, the driver license will be submitted into the evidence function according to the Evidence/Property Procedures Manual.

- (2) Seized out-of-state driver licenses will be submitted by the seizing member to the Bureau of Motorist Compliance (MS 87) at GHQ.
 - (3) Traffic Homicide Investigators will follow the procedures outlined in the Traffic Homicide Investigations Manual concerning the disposition of driver licenses.
3. Speed and Hazardous Moving Violations
 - a. A UTC or Written Warning may be issued.
 - b. Members should consider:
 - (1) Whether the violation significantly affected other traffic.
 - (2) Whether the violation contributed to a traffic crash.
 - (3) Other attendant factors such as weather conditions, other traffic present, and frequency of traffic crashes in the area.
 - (4) The historical driver license activity of the driver (D.A.V.I.D.) may be utilized.
 - c. In the case of two or more hazardous moving violations, members shall charge the offense with the best available evidence and only make one charge, except when a DUI or other serious incident (misdemeanor, felony) may require an additional charge.
4. Equipment Violations
 - a. A UTC or Faulty Equipment Notice may be issued.
 - b. Members should consider:
 - (1) The number of equipment violations present.
 - (2) The seriousness of the violation(s).
 - (3) Evidence indicating that the violation has existed for a lengthy period of time.
 - (4) Whether the violation was due to willful negligence.
 - c. When making a charge for an equipment violation, Section 316.610, Florida Statutes should be used.
 - (1) The violator will be instructed that only a municipal police officer or county sheriff's deputy may complete the affidavit of compliance.

- (2) The affidavit of compliance may not be used for violations involving a commercial motor vehicle as defined in Section 316.003(12), Florida Statutes.
5. Commercial Motor Vehicles as defined in Section 316.003(12), Florida Statutes
 - a. Violations committed by drivers of commercial motor vehicles shall be enforced in the same manner as for other drivers.
 - b. Since most commercial motor vehicles require greater stopping distance, special attention should be given to violations involving excessive speed and following too closely.
 - c. In cases involving serious equipment violations, members may request the assistance of a Commercial Vehicle Enforcement (CVE) Trooper, if one is available.
 - d. Members should ensure that the driver possesses the proper classification of commercial driver license and that any required endorsements have been obtained.
 - e. Alcohol or drug use violations
 - (1) When the driver of a commercial motor vehicle is charged with a violation of Section 316.193, Florida Statutes, the driver will be processed in accordance with standard DUI arrest procedures.
 - (2) Pursuant to Section 322.63, Florida Statutes, the driver of a commercial motor vehicle can be required to submit to an approved Portable Breath Test (PBT) or chemical test anytime a member has reasonable suspicion to believe that the driver has any alcohol, chemical substance, or controlled substance in their body.
 - (a) If such PBT (Refer to 17.06.06(C)(1)(j) for Operation of PBT Instruments) or chemical test results indicate a blood-alcohol level greater than 0.00 but less than 0.08, the driver will be issued a UTC for a violation of Sections 322.62(1) or 322.62(2)(b), Florida Statutes. In addition, the driver will be placed out of service for a period of 24 hours.
 - (b) If the driver is not being charged under Section 316.193, Florida Statutes, and has a breath-alcohol level of 0.04 or higher or refuses to submit to a PBT or chemical test,

he/she will be placed out of service for a period of 24 hours. A Notice of Commercial Driver's License/Privilege Disqualification (HSMV 78005) will be completed and forwarded to the appropriate DHSMV, Bureau of Administrative Review Hearing Office along with other required documentation within five days. A UTC should be issued for a violation of Section 322.62(1), Florida Statutes.

- (c) Being placed out of service pursuant to Section 322.62, Florida Statutes, does not prohibit the driver from driving a noncommercial motor vehicle during the 24 hour period.

6. Safety Belt and Child Restraint Violations

Recognizing the important role that safety belt and child restraint use plays in reducing traffic related deaths and injuries; a UTC should be issued. Written Warnings may not be issued for any child restraint violation of Section 316.613, Florida Statutes. Regarding a safety belt violation (primary or secondary), if there would be multiple citations issued due to other significant/egregious charges (i.e., speeding, running red light, child restraint, etc.), a Written Warning may be issued for the safety belt violation. However, Written Warnings for a violation of Section 316.614, Florida Statutes are not allowed during certain Special Enforcement Details (i.e., "Click It or Ticket", etc.).

The following provisions apply only to violations of Section 316.614, Florida Statutes.

- a. The driver of a motor vehicle involved in a traffic crash may be issued a UTC for a safety belt violation. Passengers of a motor vehicle involved in a traffic crash may be cited for failure to utilize a safety belt. Written Warnings are not allowed in traffic crash cases.
 - b. Drivers and passengers of motor vehicles may be cited for safety belt violations at a driver license or vehicle safety inspection checkpoint.
7. Violations resulting in a traffic crash should be enforced by the issuance of a UTC. Written Warnings and Faulty Equipment Notices shall not be issued for such violations. However, no charges are to be made unless the traffic crash is investigated and a report is completed in accordance with Florida Highway Patrol Policy 17.04.

8. Other non-hazardous violations will be enforced as deemed appropriate by the member.
 - a. A UTC, Written Warning or Faulty Equipment Notice may be issued.
 - b. In the event the member encounters multiple non-hazardous violations, only one charge should be made unless extenuating circumstances exist.
 - c. Special attention should be given to violations involving the use of child restraints and proof of insurance.
9. Violations involving bicycles, pedestrians, and off-road vehicles will be enforced as deemed appropriate.
 - a. A UTC, Written Warning or Faulty Equipment Notice may be issued.
 - b. In areas that have experienced high crash rates involving such persons or vehicles, enforcement of applicable law should be stressed.
10. Violations of newly enacted laws regulating traffic should initially be treated with leniency, with emphasis given to educating the motoring public about the specifics of the law. When the law does not provide for a grace period, the Division may designate a specific period of time during which members may only issue Written Warnings or Faulty Equipment Notices. In general, such grace period should not exceed six (6) months.
11. Parking Violations

Members may enforce laws regarding handicap parking spaces in public and governmental parking lots, if the parking spaces are specifically designated and marked in accordance with Section 553.5041, Florida Statutes. However, a UTC may not be issued unless the driver of the vehicle is present to accept the citation. Under no circumstances can a UTC be completed and simply attached to the vehicle.

C. JUVENILE ENFORCEMENT GUIDELINES

1. Suspension of License reference Section 322.2616 (Underage Drinking), Florida Statutes, gives law enforcement officers, who have reasonable suspicion, the authority to detain and determine if underage drivers have any breath-alcohol or blood-alcohol level. It also provides for the administrative suspension of the driving privilege of any driver under age 21 who is found to have a breath-alcohol or blood-alcohol level of 0.02 or higher. In view of this, members shall:

- a. First, ensure that lawful contact was made prior to an underage driver being checked for a violation of Section 322.2616, Florida Statutes. Lawful contacts include, but are not limited to:
 - (1) A traffic stop related to a violation of Florida law.
 - (2) Contact at a Comprehensive Roadside Safety Checkpoint.
 - (3) Contact at a Driver License or Vehicle Safety Inspection Checkpoint.
 - (4) Contact at the site of a traffic crash.
 - (5) A consensual encounter with an underage driver.
- b. Rule out the possibility that the driver is legally impaired under Section 316.193, before checking for a violation of Section 322.2616, Florida Statutes. If impaired, an arrest shall be made for DUI.
 - (1) Interview the driver, verify the driver's age and check for signs of impairment.
 - (2) Check the driver for a medical bracelet.
 - (3) Have the driver perform standardized field sobriety exercises if reasonable suspicion exists.
 - (4) Rule out probable cause to make an arrest for DUI.
- c. If no DUI arrest is to be made, but there are indications of alcoholic beverage consumption, the member will determine if the driver is in violation of Section 322.2616, Florida Statutes.
- d. After 20 minutes of being with the driver, the member shall request the driver to perform a breath test utilizing the PBT instrument. A member who has had training to utilize the PBT through the manufacturer and/or the department shall request the driver to take a minimum of one breath test to determine the driver's breath-alcohol level. If no PBT is available to administer the breath test(s), the person may be taken to a local testing facility to determine breath-alcohol or blood-alcohol content. The driver shall then be transported back to the location that they were taken from and released.
- e. If the breath sample yields a breath-alcohol or blood-alcohol level of 0.02 or higher, the member will take the driver's license and issue a Notice of Suspension (HSMV 78103).

- f. If the driver refuses to give a breath sample, the member will read the implied consent warning from the Zero Tolerance Citation (HSMV 78103) to the driver. If the driver continues to refuse, the member will take the driver's license and issue the Notice of Suspension.
- g. If there is no arrest for another violation and the driver is age 18-20, the driver will be released and advised not to drive, after reasonable steps are taken to ensure the safety of the individual in accordance with policy. An attempt to contact a responsible adult to come take possession of the vehicle will be made. The vehicle may be towed if a responsible person cannot come to drive the vehicle away.
- h. If there is no custodial arrest for another violation and the person is under age 18, the member will attempt to contact a parent, guardian, or legal custodian to come pick up the vehicle and juvenile. If contact with a responsible person is unable to be made, the vehicle shall be towed, and transportation to the juvenile's residence shall be obtained. Transportation to the Juvenile Center/Shelter will be made if the residence is out of the general area.
- i. Documenting Suspension under Section 322.2616, Florida Statutes
 - (1) Fill out and issue Notice of Suspension (HSMV 78103).
 - (2) Complete the Affidavit of Probable Cause.
 - (3) Complete the Affidavit of Refusal to Submit to Breath Test, if applicable.
 - (4) Complete the Breath Test Result Affidavit for under Age 21 Suspensions, if applicable.
 - (5) Send all required forms to the appropriate DHSMV, Bureau of Administrative Review Hearing office within 5 days.
- j. Operation of Portable Breath Test Instruments
 - (1) Only members who have been trained on the PBT through the manufacturer and/or department shall administer breath tests utilizing the PBT.
 - (2) PBT operators will follow the manufacturer's operational procedures for conducting all portable breath tests.

- (3) A copy of the manufacturer's operational procedures shall be included in each PBT's carrying/storage case.
- (4) The PBT shall only be used for administrative suspensions on the 0.02 Zero Tolerance and the 0.04 Commercial Vehicle Disqualification.
- (5) Use of the PBT is for the administrative suspension of a driver's license and does not constitute an arrest. A PBT shall not be used as a determining tool in making the decision for a DUI arrest under Section 316.193, Florida Statutes.

k. Procedure for use of Blood Test Results for Section 322.2616, Florida Statutes

In the event that breath-alcohol or blood-alcohol test results are used to suspend the driving privilege under Section 322.2616, Florida Statutes, the member shall follow the established procedures for implementing Section 322.2615, Florida Statutes.

D. SPECIFIC GROUPS AND OFFICIALS

1. United States Senators and Congressmen

- a. Article 1, Section 6, of the United States Constitution provides members of the United States Congress and Senate privilege from arrest during the session of their respective houses, and in going to and returning from the same.
- b. During the period specified by the United States Constitution, members may issue a Written Warning, a UTC or a Notice to Appear but will not subject a United States congressional representative or senator to custodial arrest, except in cases of treason, felony or breaches of the peace; e.g., assault or DUI.

2. Diplomats, Consulars and Foreign Nationals

See FHP Policy 11.06, for guidance regarding the handling of Diplomats, Consulars and Foreign Nationals.

3. Military Personnel and Nonresidents

- a. Violations committed by military personnel not in the performance of their official duties or as a consequence of responding to an emergency situation should be handled in a manner consistent with the enforcement guidelines of this policy.

- b. Violations committed by nonresidents or other persons specifically mentioned in section "D" of this policy are to be handled as deemed appropriate by the member involved. Members should strive for uniformity and consistency in taking enforcement action.

- 4. Juveniles
 - a. Juveniles will be dealt with in accordance with Chapter 985, Florida Statutes and FHP Policy regarding juvenile offenders.

 - b. See Section 17.06.06(C) for further guidance regarding juvenile offenders.