

OKALOOSA COUNTY SHERIFF'S OFFICE



Standard Operating Procedure

Effective Date: December 30, 1999	Rescinds: Amends: SOP 43.03	Number: SOP 26.03
SUBJECT: DUI Enforcement - Zero Tolerance Law		Re-evaluate (1) year after effective date
Distribution: Field Services Division	CFA:	

Index as: DUI Enforcement - Zero Tolerance
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 .02 Law - DUI Enforcement

This Standard Operating Procedure consists of the following numbered sections:

1. Purpose
2. Definitions
3. 322.2616, F.S. - Authority
4. Standard Operating Procedure

1. Purpose

The purpose of this Standard Operating Procedure is to develop guidelines for the agency to implement the provisions of 322.2616 F.S., commonly referred to as the .02 Law or Zero Tolerance Law.

2. Definitions

- A. Portable Breath Testing Equipment (PBT) - an instrument designed to determine breath-alcohol level as authorized by 316.1932 F.S. or by a preliminary alcohol screening test device listed in the United States Department of Transportation's conforming-product list of evidential breath-measurement devices.
- B. Zero Tolerance Law - the Florida statute that makes it unlawful for a person under the age of 21 years who has a breath-alcohol level of 0.02 percent or higher to drive or be in actual physical control of a motor vehicle.


3. **322.2616 F.S. - Authority**

- A. Notwithstanding s. 316.193, it is unlawful for a person under the age of 21 who has a breath-alcohol level of 0.02 percent or higher to drive or be in the actual physical control of a motor vehicle.
- B. A law enforcement officer who has probable cause to believe that a motor vehicle is being driven or is in the actual physical control of a person who is under the age of 21 while under the influence of alcoholic beverages or who has any breath-alcohol level may lawfully detain such person and may request that person to submit to a test to determine his/her breath-alcohol level.
- C. A law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of such person if the person has a blood-alcohol level of 0.02 percent or higher. The officer shall also suspend, on behalf of the department, the driving privilege of a person who has refused to submit to a test. The officer shall take the person's driver's license and issue the person a 10-day temporary driving permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of suspension.

4. **Standard Operating Procedure**

- A. Enforcement of F.S. 316.2616
 - 1) Lawful Contact - A lawful contact must be made before an underage driver can be checked for a violation of 316.2616, F.S. Lawful contacts include:
 - A traffic stop related to a violation of Florida Law.
 - Contact at a sobriety checkpoint.
 - Contact at the site of a traffic crash.
 - A consensual encounter with an underage driver.
 - 2) Rule Out a Violation of 316.193, F.S. - Before checking the driver for a violation of 322.2616, F.S., the deputy will rule out the possibility that the driver is legally impaired under 316.193, F.S.
 - Interview the driver, verify the driver's age and check for signs of impairment.
 - Have the driver perform standardized field sobriety tasks if reasonable cause exists.
 - Rule out probable cause to make an arrest for DUI.

- 3) Check for Violation of 322.2616, F.S. - If probable cause does not exist to arrest the driver for DUI, but there are indications that the driver has been drinking, the deputy will contact a member of agency who has been trained in the use of a PBT.
- 4) The PBT operator will administer testing of the driver as follows:
 - After being with the driver for at least twenty (20) minutes by either the originating deputy or the PBT operator, the PBT trained deputy will request the driver perform a breath test consisting of two (2) samples on the PBT.
 - If the two breath samples yield breath alcohol levels of 0.02 or higher, the PBT deputy will take the driver's license and issue a suspension using forms provided by the Department of Highway Safety and Motor Vehicles.
 - If the driver gives one (1) breath sample and refuses to give a second sample, the PBT trained deputy will take whatever action is warranted based on the first sample.
 - If there is no arrest for another violation and the driver is between 19-20, the driver will be released and advised not to drive after reasonable steps are taken to insure the safety of the driver or other individuals in the vehicle.

 ***Deputies are reminded that they have no legal means to prevent the driver from continued operation of the vehicle based on a breath-alcohol level below 0.05 percent.***
 - If there is no arrest and the person is under the age of 18, the deputy will:
 - (1) Attempt to contact the parents or a responsible relative to pick the juvenile up; or
 - (2) Allow a responsible person to operate the vehicle; or
 - (3) Tow the vehicle and bring the underage person to a district station for parent notification.

☞ ***Deputies are reminded that any juvenile in violation of 322.2616, F.S. is not facing criminal sanctions and should not be handcuffed or placed in an area with persons who are under arrest or taken into a detention facility or locked into a holding facility.***

- Since probable cause for the DUI arrest has already been eliminated (See section 4(A)(2), if the two breath samples yield a breath alcohol level in excess of 0.08, an arrest should not be made under 316.193, F.S. A suspension under 322.2616, F.S. should be issued.

☞ ***Under no circumstances shall a PBT test be used as a basis for determining probable cause to enforce 316.193, F.S. PBT testing shall only be used to determine breath-alcohol levels in the enforcement of 322.2616, F.S.***

B. Documenting Suspension Under 322.2616, F.S.

- 1) Fill out and issue ***Notice of Suspension*** provided by the Department of Highway Safety and Motor Vehicles.
- 2) Complete ***Probable Cause Affidavit***.
- 3) Complete ***Affidavit of Refusal to Submit to Breath Test***, if applicable.
- 4) Complete ***PBT Breath Test Result Affidavit***, if applicable.
- 5) Send all required forms to the Department of Highway Safety and Motor Vehicles as required by 322.2616, F.S.

5. Operation and Care of PBTs

A. Operation

- 1) Only deputies who are trained PBT operators shall administer breath tests with the agency's PBT.
- 2) PBT operators will follow the manufacturer's procedure for conducting all breath tests.

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- 3) A copy of the manufacture's procedure shall be included in each PBT's carrying/storage case.
- 4) PBT operators will maintain a personal log of all breath tests conducted on a PBT.
- 5) The supervisor of the Traffic Enforcement Unit or his/her designee shall maintain all records pertaining to training and administering PBT tests.

B. Routine Care and Service of PBTs

- 1) Only PBT service technicians shall perform service on the agency's PBTs.
- 2) All PBTs will be calibrated according to the manufacture's recommendation.
- 3) All PBTs shall be checked for accuracy according to the manufacture's recommendations.
- 4) All PBT service technicians will keep a log of all service performed on the agency's PBTs.

6. Training

- A. Prior to operating an agency PBT, the deputy shall receive training from a certified PBT instructor.
- B. The agency shall develop and maintain a training program for the use of PBTs and the technical servicing of the instrument.

Division Commander

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