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FLORIDA CRIMINAL LAW GUIDE:

CRIMINAL OFFENSES AND CRIMINAL PROCEDURE IN FLORIDA, TRAFFIC STOPS AND DUIs

PART 1



This guide has been created as a general information tool. If you would like specific legal advice for your case contact our office at 407-953-5818 for a free consultation with Attorney Jonathan Torres.

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2. Florida Criminal Procedure (with hyperlinks)

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TRAFFIC STOPS

Traffic stops are the most common encounter with police in Florida. If you are being stopped, put your blinkers on and pull over safely as soon as possible. KEEP CALM. A lot of arrests occur during traffic stops and situations can escalate rather quickly.

A FEW THINGS TO KEEP IN MIND:

1. AFTER PULLING OVER SAFELY, TURN OFF THE IGNITION, ROLL DOWN THE WINDOW, DO NOT GET OUT OF YOUR VEHICLE AND PUT YOUR HANDS ON THE STEERING WHEEL AND DO NOT UNBUCKLE YOUR SEATBELT. During stops during the night I suggest turning on your interior lights in your car.
2. ALWAYS BE RESPECTFUL TO POLICE AND POLITE EVEN IF THEY ARE NOT.
3. ALWAYS COMPLY WITH OFFICER'S INSTRUCTIONS.
4. AVOID EXCESSIVE TALKING OR UNNECESSARY QUESTIONS.
5. DO NOT GET ANGRY OR CURSE AT THE OFFICER.
6. PROVIDE YOUR LICENSE AND REGISTRATION TO THE OFFICER AND WAIT FOR INSTRUCTIONS.
7. IF YOU BELIEVE THE OFFICER IS BEING UNPROFESSIONAL OR HE IS DISCRIMINATING YOU IN ANY WAY, ASK FOR HIS/HER NAME AND BADGE NUMBER AND FILE A REPORT LATER. DO NOT TELL HIM OR HER THAT YOU WILL BE FILING ONE. Remember police officers now all have bodycams. You or your attorney can always request for a copy of a bodycam.
8. IF YOU HAVE A DASHCAM, start recording with it if possible.
9. NEVER MAKE ANY SUDDEN MOVEMENTS DURING A TRAFFIC STOP. ALWAYS INFORM THE OFFICER WHAT YOU ARE DOING. Example: I have my wallet in the glove box or can I reach for my wallet, etc. If you exit the vehicle before being asked the officer may think you are

getting ready to flee or fight. If you are asked to exit the vehicle do so calmly and carefully. The officer may pat you down for a weapon and remove a suspicious object.

10. DO NOT INCRIMINATE YOURSELF. BAD IDEA. It is better to remain silent rather than to incriminate yourself.
11. IF YOU HAVE A CONCEALED WEAPON PERMIT AND YOU HAVE A WEAPON ON YOUR PERSON OR IN THE VEHICLE, BE POLITE TO THE OFFICER AND SHOW THEM SUCH CONCEALED WEAPON PERMIT AND INFORM THEM OF IT AND ASK THEM FOR DIRECTIONS AND INSTRUCTIONS TO AVOID ANY MISUNDERSTANDINGS. **DO NOT REACH FOR THE GUN. PERIOD.**

Vehicle Searches

If the police suspect you have contraband or you give the officer reason or probable cause to search your vehicle, the officer will want to search your vehicle. A police officer needs a valid reason to search a vehicle, or permission from the driver. It is also important to note that an officer will frisk you if they have a valid reason to believe you are armed or you have committed a criminal offense or you are involved in any criminal activity.

If you have contraband or other evidence of a crime in plain view such as alcohol containers that are open, drugs, drug paraphernalia, weapons, and other items out in the open can result in a search of your vehicle.

If a driver or a passenger in a car is arrested the vehicle may be searched. If you are arrested the car can be towed and an "inventory" search of the contents can be conducted.

If an officer asks to search your car without a warrant you may refuse or simply remain silent.

PLEASE NOTE ANY EVIDENCE OBTAINED BY A POLICE OFFICER THAT IS CONDUCTED WITHOUT PROBABLE CAUSE CAN BE EXCLUDED FROM COURT AND CANNOT BE USED TO CONVICT YOU. **AN ATTORNEY CAN**

FILE A MOTION TO SUPPRESS EVIDENCE FOR THE COURT'S CONSIDERATION.

CONSTITUTIONAL CONSIDERATIONS FOR SEARCHES

The 4TH Amendment of the U.S. Constitution and relevant sections of the Florida Constitution holds that the people have a right against unreasonable searches and seizures. Searches will often involve the issuance of a search warrant, but not always. Searches and seizures can occur without a warrant under certain circumstances if the search is reasonable.

Searches and seizures that occur randomly or that are overly burdensome or intrusive, however, will generally not be considered reasonable by a court.

Under the Fourth Amendment, arbitrary police car searches are illegal. If the police search your car without your permission or a valid reason, they are violating your constitutional rights. Typically, an officer must have reason to believe a crime has been committed before searching your car.

Under the Fourth Amendment, courts generally give police more leeway to search a vehicle, rather than a home. Known as the automobile exception to search warrant requirement. Why? Because individuals have less of an expectation of privacy when driving a car than in their homes.

YOUR RIGHTS PRIOR TO CUSTODIAL INTERROGATION:

MIRANDA WARNINGS

Prior to any interrogation from police, police must advise you of certain rights you may have. Any statements updated in custodial interrogation contrary to these rights may be subject to suppression and may not be used as evidence against someone. This is a typical script that a police officer will read prior to having a custodial interrogation:

1. **You have the right to remain silent.**
2. **Anything you say can and will be used against you in a court of law.**
3. **You have the right to talk to a lawyer and have him present with you while you are being questioned.**

4. **If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.**
5. **You can decide at any time to exercise these rights and not answer any questions or make any statements.**
6. **Do you understand each of these rights I have explained to you?**
7. **Having these rights in mind, do you wish to talk to us now?**
 - **IMPORTANT:** You have the right to remain silent. You do not have to answer questions about where you were born, whether you are a U.S. citizen, or how you entered the country. (Separate rules apply at international borders and airports.)
 - You are only expected to identify yourself to Florida law enforcement officers (police officers and Sheriff's deputies, not immigration or FBI agents) when you are stopped on suspicion of a crime or a traffic violation. If you do not have identification documents, you may choose to remain silent.
 - You have zero obligation to provide your name or "show your papers" to an ICE officer for any reason.
 - **NEVER TELL LIES OR PROVIDE FALSE DOCUMENTS.**

HIRING A PRIVATE ATTORNEY VS. PUBLIC DEFENDER

Public defenders are good lawyers. However, please understand that public defenders are often overworked and may not be able to dedicate as much time and give you the personal attention that your case needs and push you to an early plea without much investigation or work on your case.

SENTENCING GUIDELINES

- Misdemeanors and felonies under the Criminal Statutes are punishable based on a Score Sheet.
- It is also extremely important also to analyze if a person has a prior record.
- Certain offenses have minimum sentences, such as offenses involving weapons or guns during the commission of a crime.

- Certain types of felonies have minimum sentences as well.
 - Repeat offenders can also have minimum sentences.
 - Each degree of misdemeanor carries a maximum penalty as well as each degree of felony. As far as felonies as noted above there are certain offenses that carry a minimum sentence.
 - ALWAYS ASK FOR A COPY OF YOUR SCORESHEET IN YOUR CASE PRIOR TO AGREEING TO ANY TYPE OF PLEA AGREEMENT AND DISCUSS WITH YOUR ATTORNEY.
 - ONLY TAKE A PLEA AFTER REVIEWING ALL DISCOVERY IN A CASE AND TALKING TO YOUR ATTORNEY.
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DUIs

You must request a formal review of the suspension of your driver's license within 10 days of a DUI and attend a DMV hearing and have an attorney accompany you. If you do not the DMV will automatically suspend your driver's license.

ASK YOUR ATTORNEY ABOUT HARDSHIP LICENSES AND THE REQUIREMENTS IN FLORIDA FOR HARDSHIP LICENSES. When the suspension is for failure to submit to a breath or blood test, a hardship license may be applied for after 90 days. If the suspension is for a blood alcohol level of .08 or higher, a hardship license may be applied for after 30 days.

When stopped for a DUI, you have the right to refuse the field sobriety tests, as well as the breathalyzer, unless there has been an accident involving serious injury or death.

Florida is an implied consent statement meaning that a refusal to submit to a breath test will result in an automatic suspension of your driving privileges for a period of one year or for a period of 18 months if driving privileges have been previously suspended.

A driver who submits to a breath or blood test and has a blood alcohol level of .08 or higher will have their

driving privileges suspended for a period of 6 months for a first offense or for a period of 1 year if driving privileges have been previously suspended.

CRIMINAL PENALTIES FOR DUI:

- First DUI conviction:
 - Minimum \$500 fine, maximum \$1,000 fine.
 - If blood/breath alcohol level (BAL) was .15 or higher, or if there was a minor in the vehicle, minimum fine of \$1,000 or maximum of \$2,000.
 - Maximum Imprisonment six months.
 - If BAL was .15 or higher, or if there was a minor in the vehicle, maximum imprisonment nine months.
 - Vehicle immobilization 10 days unless the family of the Defendant has no other transportation.
- Second DUI conviction:
 - Minimum \$1,000 fine, maximum \$2,000 fine.
 - If BAL was .15 or higher, or if there was a minor in the vehicle, minimum \$2,000 fine, maximum \$4,000 fine.
 - Imprisonment for not more than nine months.
 - If BAL was .15 or higher, or if there was a minor in the vehicle, imprisonment maximum 12 months.
 - If second DUI conviction was within five years of a prior conviction, minimum imprisonment of at least 10 days, with at least 48 hours of consecutive confinement.
 - If second conviction within five years vehicle immobilization for 30 days unless the Defendant's family

has no other means of transportation.

- Third DUI conviction (within 10 years from the second offense):
 - Minimum \$2,000 fine, maximum \$5,000 fine.
 - If BAL was .15 or higher, or if there was a minor in the vehicle, minimum \$4,000 fine.
 - If third conviction is within 10 years of a prior conviction, mandatory imprisonment of at least 30 days. At least 48 hours of confinement must be consecutive.
- Third DUI conviction (more than 10 years from second):
 - Minimum \$2,000 fine or more than \$5,000.
 - If BAL was .15 or higher, or if there was a minor in the vehicle, not less than \$4,000 fine.
 - If third conviction is more than 10 years of a prior conviction, imprisonment maximum 12 months.
 - Third conviction within 10 years of a prior conviction = 90 days vehicle immobilization.
- Fourth DUI or subsequent conviction:
 - Minimum \$2,000 fine.
 - If BAL was .15 or higher, or if there was a minor in the vehicle, not less than \$4,000 fine.
 - Maximum imprisonment five years, or as provided under Florida Statutes, if person is a habitual/violent offender.

Repeat DUI Offender or Crash Involving Serious Bodily Injury

- Any person convicted of a third DUI within 10 years of a prior conviction or a fourth or

subsequent DUI, is guilty of committing a third-degree felony (maximum \$5,000 fine and/or five years imprisonment).

- Any person who causes serious bodily injury while driving under the influence is guilty of committing a third-degree felony (maximum \$5,000 fine and/or five years imprisonment) or as provided in Florida Statutes, if habitual/violent felony offender.

Manslaughter and Vehicular Homicide

- DUI Manslaughter: Second degree felony (maximum \$10,000 fine and/or 15 years imprisonment).
- DUI Manslaughter/Leaving the Scene: A driver convicted of DUI manslaughter who knew/should have known the crash occurred, but failed to give information or render aid is guilty of a first degree felony (maximum of \$10,000 fine and/or 30 years imprisonment).

Driver License Revocation Periods for DUI

- First offense without bodily injury: Minimum 180 days revocation, maximum one year.
- First offense with bodily injury: Minimum three years revocation.
- Second offense within five years from prior conviction: Minimum five years revocation. May be eligible for hardship reinstatement after one year.
- Second offense five or more years after first conviction, the same revocation periods as first offense apply.
- Third offense within 10 years of the second conviction: Minimum 10 years revocation. May be eligible for a hardship reinstatement after two years.
- Third offense 10 or more years after the second conviction, the same revocation periods as first offense apply.
- Fourth conviction, regardless of when prior convictions occurred: Mandatory permanent

revocation. May be eligible for hardship reinstatement after five years. If incarcerated, the revocation period begins upon date of release from incarceration.

- DUI manslaughter: Mandatory permanent revocation. May be eligible for hardship reinstatement after five years if there are no prior DUI related convictions.
- Manslaughter, DUI serious bodily injury or vehicular homicide convictions: Minimum three years revocation.

Commercial Motor Vehicle Licenses

- If you hold a commercial motor vehicle license you may be disqualified from operating a commercial vehicle for one year when the blood alcohol level of .04 or above; when refusing to submit to a test to determine the alcohol concentration while driving a commercial vehicle; or while driving a commercial vehicle while under the influence of alcohol or controlled substance; or driving a commercial vehicle while in possession of a controlled substance.

Individuals convicted of a DUI, may have their driver license privilege reinstated for business or employment purposes.

First DUI conviction must complete DUI school and apply for hearing for possible hardship reinstatement with DMV. Mandatory ignition interlock device for up to six months for BAL of .15.

Subsequent convictions, no hardship license except as provided below. Mandatory ignition interlock device for one to two years if BAL is greater than .15.

Second conviction within five years, five-year revocation. May apply for hardship reinstatement hearing after one year. Must complete DUI school and remain in the DUI supervision program for the remainder of the revocation period. Failure to report

for counseling or treatment results in cancellation of the hardship license. Applicant may not have consumed any alcoholic beverage or controlled substance or driven a motor vehicle for 12 months prior to reinstatement. Mandatory ignition interlock device for one to two years if BAL is greater than .15.

Third conviction within 10 years of a prior conviction, 10-year revocation. May apply for hardship reinstatement hearing after two years. Must complete DUI school and remain in the DUI supervision program for the remainder of the revocation period. Failure to report for counseling or treatment results in the cancellation of the hardship license. Applicant may not have consumed any alcoholic beverage or controlled substance or driven a motor vehicle for 12 months prior to reinstatement. Mandatory ignition interlock device for two years.

DUI manslaughter with no prior DUI-related conviction, permanent revocation. May be eligible for hardship reinstatement after five years have expired from date of revocation or from date of term of incarceration under certain circumstances. If these circumstances are met, an ignition interlock device is required for two years.

- Manslaughter, DUI serious bodily injury, or vehicular homicide convictions, three-year revocation. Persons may immediately apply for hardship reinstatement hearing. Must complete DUI school or advanced driver improvement course.

Hardship License Not Issued

- No hardship reinstatement if you have a second or subsequent suspension for test refusal or if driver has been convicted of DUI two or more times.
- Persons disqualified from operating a Commercial Motor Vehicle cannot obtain a hardship license to operate a commercial vehicle.

Convictions that Require DUI School

- First DUI conviction must complete DUI school before hardship reinstatement. Offenders who wait until revocation period

ends before reinstatement must show proof of enrollment or completion for driver license to be reinstated. If an offender enrolls and is reinstated after the revocation period expires, failure to complete the DUI school within 90 days after reinstatement will result in license cancellation. The driver license cannot be reinstated until DUI school is completed.

- Second DUI conviction in five years (five-year revocation) or third conviction in 10 years (10-year revocation), an offender must complete DUI school following conviction.
- DUI manslaughter with no prior DUI-related conviction, permanent revocation. An offender must complete DUI school before hardship reinstatement.
- Offenders who wait until revocation period expires must enroll in DUI school and pass the driver license exams to be reinstated. Failure to complete the school within 90 days after reinstatement will result in cancellation of the license until the school is completed.
- Reckless driving, if the court has reason to believe that the use of alcohol, chemical or controlled substances contributed to a violation of reckless driving, the person convicted of reckless driving must complete DUI school if ordered by the court.

Florida Implied Consent Law

- Refusal to submit to a breath, urine, or blood test is admissible as evidence in DUI criminal proceedings. Second or subsequent refusal is a misdemeanor of the first degree.
- Driver license suspension periods, first refusal, suspended for one year. Second or subsequent refusals, suspended for 18 months.
- Commercial driver license disqualification periods: first refusal disqualified for one year; second or subsequent refusals disqualified permanently. No hardship reinstatement permitted.

- Blood may be withdrawn in DUI cases involving serious bodily injury or death by authorized medical personnel with the use of reasonable force by the arresting officer, even if the driver refuses.

Final Note: Florida Statutes authorizes law enforcement officers to lawfully detain and request a breath-alcohol test from any person, under the age of 21, who the officer has probable cause to believe is driving or in actual physical control of a motor vehicle while under the influence of alcohol or having any alcohol level.

ATTORNEY JONATHAN TORRES HAS BEEN REPRESENTING DEFENDANTS IN CRIMINAL MATTERS AND DUIs FOR OVER 10 YEARS.



CALL US FOR A FREE CONSULTATION AT 407-953-5818 or visit us at jtorreslaw.com.

PART 2 COMING SOON **WHICH WILL ADDRESS SEARCH** **WARRANTS, ARREST WARRANTS,** **IMMIGRATION ISSUES RELATED** **TO CRIMINAL CASES AND DRUG** **CASES IN FLORIDA**