

*Regardless of How Often You Drink, Or How Much You Drink, Knowing What Happens During a Typical DUI Stop in Florida Is Knowledge that Everyone Who Drives a Vehicle Should Have*

# WHAT TO EXPECT DURING A FLORIDA DRIVING UNDER THE INFLUENCE STOP



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For anyone who has ever had a glass of wine or a beer while out to dinner it is a nightmare come true – being stopped by the police because they suspect you are driving under the influence. For most people, just seeing the flashing lights in the rearview mirror is enough to create anxiety and rattle the nerves. There is no way to change the fact that you had a glass (or was it two?) of wine with your dinner; however, you could have an influence on whether or not the officer decides to arrest you. Knowing what to expect during a Florida DUI stop should help prevent you from panicking. That, in turn, may help you perform better on the field sobriety tests that the officer will probably ask to perform. Regardless of how often you drink, or how much you drink, knowing what happens during a typical DUI stop is knowledge that everyone who drives a vehicle should have.

## WHEN ARE THE POLICE ALLOWED TO PULL YOU OVER?

Pulling a motorist over and searching the motorist and/or the vehicle is a “search and seizure” in the United States. The United States Constitution protects us from unreasonable searches and seizures in the Fourth



Amendment. Since the automobile had not even been contemplated when the Constitution was written, the Supreme Court of the United States, or SCOTUS, has had to decide under what circumstances a law enforcement officer can search a vehicle without violating the rights found in the Constitution. SCOTUS has long held that we

have a diminished expectation of privacy while driving down a public roadway in a vehicle. Therefore, it is easier for the police to legally justify the search of your vehicle than the search of your home where your expectation of privacy is much greater. This is not to say, however, that the police can stop you and search your vehicle whenever they want. On

the contrary, the police are required to have probable cause to pull you over in your vehicle.

“Probable cause” means that the officer must reasonably believe that criminal activity is, or was, taking place. Often, an officer will claim that a motorist was driving erratically or aggressively in an attempt to provide the probable cause necessary to justify a stop. The police also commonly use what is referred to as a

“pretextual stop”. A “pretextual” stop is one in which the officer uses a minor traffic violation such as a broken taillight to pull you over, all the while hoping to find signs of intoxication once you are stopped. This is where it gets murky. An officer can pull you over using a pretext; however,



the officer cannot detain you for longer than it would normally take to resolve the original reason for the stop (the infraction).

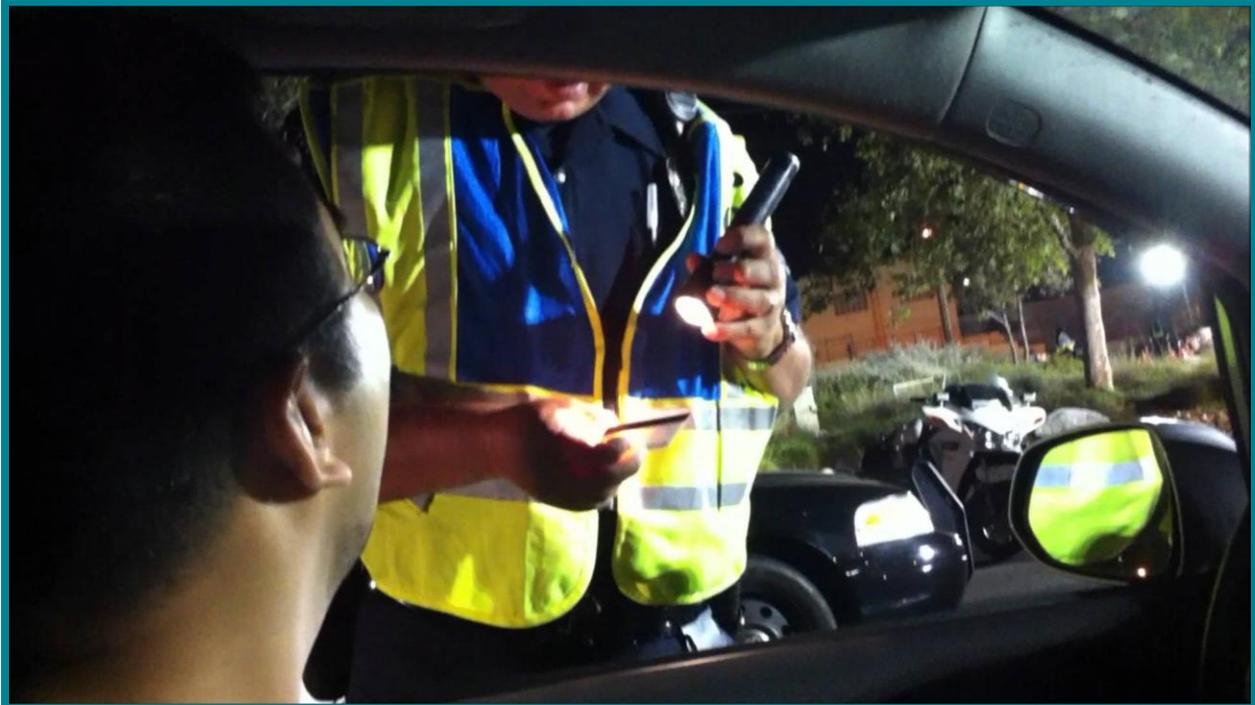
An officer cannot legally search you or your vehicle because you are guilty of a minor traffic violation such as the broken taillight. So, if the officer believes you are driving under the influence he or she must have probable cause to believe the criminal offense of DUI has been committed at this point to continue the investigation or initiate a search.

Whether or not the police officer that pulled you over violated your rights is something your attorney will worry about when the time comes to do so. For your part, if you are ever stopped it is important to remember the officer's stated reason for the stop and how long the officer held you before moving on to the field sobriety tests.

One note on probable cause for DUI stops: DUI checkpoints are treated differently than a traditional DUI stop made by a patrol officer. If you are arrested at a DUI checkpoint the analysis of the stop is different and is

much more favorable to the police.

## POLICE QUESTIONING – HOW SHOULD YOU ANSWER?

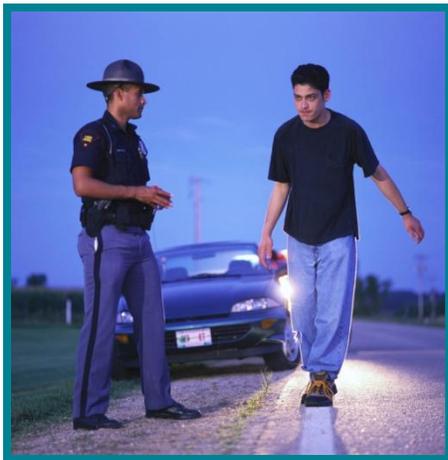


After an officer has pulled over a motorist the officer will typically begin a series of questions. The first few questions will seem harmless enough and will focus on things such as your identity and the registration of your vehicle. At some point, the officer will likely slip in THE question – “How much have you had to drink tonight?” Often, the question is phrased just like that to make it sound as though the officer already knows you have been drinking, just not how much. This puts a motorist who has had a drink in a difficult position. Lying to the police is never a good idea; however, incriminating yourself is also not a good idea. In fact, you have a Constitutional right against self-incrimination. So, what should you do? When possible, deflect the question. Respond with your own question – “Why do you ask officer?” or “What makes you think I have been drinking officer?” If that doesn’t work you have the option of simply telling the officer that you are exercising your right to remain silent and will not be

answering any additional questions. What you do not want to do is admit to drinking. You may feel that admitting to a single drink can't hurt you but it can because you have just given the officer the probable cause needed to continue to detain you. Furthermore, most officers assume you are lying when you admit to "just one drink". Therefore, the officer will likely pursue the arrest on the belief that you have, indeed, been drinking.

## FIELD SOBRIETY TESTS – THE EVIDENCE COLLECTION PHASE

No matter how the officer arrived at the conclusion that you are driving under the influence, once the officer has reached that conclusion you will likely be asked to step out of the vehicle and perform some field sobriety tests, or FSTs. You have undoubtedly seen these performed (probably poorly) on one of the various reality television shows that center around



law enforcement agencies. Before you assume that you would perform better than the motorists you watched on a reality show, consider that the tests are designed to indicate intoxication. In other words, they are used to confirm what an officer already believes. While they may sound easy to perform, the reality is that even completely sober the standardized FSTs can be difficult to perform without committing an error or

errors. Once you add in the stress of being under suspicion of a crime they become all but impossible to pass.

Most officers use the standardized FSTs that have been approved by the National Highway Traffic Safety Administration, or NHTSA; although, an officer may use any number of non-standardized tests which are even more difficult to pass because of the subjective nature of the test itself. The three standardized FSTs include:

- **Horizontal gaze nystagmus test (HGN)** – the HGN test calls for the officer to use an object such as a pen light and move it from the center of your field of vision to the side and then back to the center. The test is checking for “nystagmus” which is an involuntary “jerking” or “twitching” of the eye that increases when a test subject is intoxicated.
- **One-leg stand**— for this test you have to stand on one leg with your arms down for a count of thirty. Using your arms for balance will mean failure as will putting your foot down or out.
- **Walk and turn** – to pass this test you must walk heel to toe for nine steps and then execute a complicated turn and walk back the same way. Your arms must remain at your side. Too many or too few steps means failure as does an improper turn or swaying while you walk.

Aside from your nerves, there are a wide variety of other factors that can cause a perfectly sober motorist to fail any, or all, of the FSTs, such as:

- Not understanding the instructions
- Uneven pavement
- Inadequate lighting
- Debris in the roadway
- Physical disability
- Weather
- Prescription or over the counter medication
- Improper officer training
- Improper interpretation of the results by the officer

You have the right to refuse to perform the FSTs and in many cases this is the best course of action. Most of the time the officer has already decided to arrest you before asking you to perform the FSTs, meaning that all you

accomplish by agreeing is to give the officer additional evidence to be used against you. Keep in mind, however, that refusing the tests will likely lead to your arrest if the officer feels that an arrest can be justified at that point.

## CHEMICAL TEST – DO YOU HAVE TO TAKE IT?

The final destination in your DUI stop journey will be for a chemical test. By now the officer has already taken you into custody and formally charged you with DUI. Unless drugs are suspected, you will likely be asked to submit to a breath test. Florida's implied consent law says that you have already consented to the test; however, you can still refuse. Refusal comes with a penalty though of a one year license suspension. If you submit to the test and the results show a breath alcohol content, or BAC, of 0.08 or higher you have given the State of Florida additional evidence of your guilt.

If you have been charged with a Florida driving under the influence charge the best thing you can do is speak to an experienced Florida DUI attorney as soon as possible. There are a number of defenses that are commonly used in a DUI case that could be used in your case to prevent a conviction.



NOLO, [DUI and DWI Offenses](#)

National Highway Transportation Safety Administration, [Standardized Field Sobriety Tests](#)

Online Sunshine, [Driving Under the Influence, Penalties](#)

Online Sunshine, [Tests for Alcohol, Chemical Substances, Controlled Substances, Implied Consent, Refusal](#)

## ABOUT THE AUTHORS



**Amanda Powers Sellers**

Florida criminal defense lawyer, Amanda Powers Sellers, has aggressively defended thousands of Florida criminal cases. With over nine years of criminal jury trial experience, she has the necessary background to represent cases ranging from Driving under the Influence (DUI) to

First Degree Murder.

Amanda is a seasoned litigator and an aggressive negotiator. With a wealth of experience she has proven that her gentle, but aggressive style of criminal defense litigation consistently achieves results for her clients.



**Jenna C. Finkelstein**

Florida criminal defense attorney, Jenna Finkelstein, has over sixty (60) criminal jury trials to her credit. Her experience defending individuals charged with crimes in the state of Florida ranges from domestic battery to DUI Manslaughter, Sexual Battery, First Degree Murder and all

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She is passionate about the law and promises personal attention to all of her clients and their individual needs. Jenna is a seasoned trial attorney who knows the legal system and its players. Jenna and her team at the Law Offices of Powers Sellers & Finkelstein, PLC, are committed to fighting for you.

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