

# Florida Spring Break

# Survival Guide Spring 2011

Traffic Law

Alcohol Related Law

Drug Related Law

Criminal Procedures



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## Have Fun & Stay Safe

The following information may be helpful in planning your break activities. By avoiding common mistakes, your spring break memories can be free of costly tickets and criminal arrests.

We hope you will have a safe and enjoyable Florida Spring Break

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## For Further Information

This publication is for educational purposes only and is not a substitute for legal advice from an attorney. This publication is available online at the University of Central Florida Student Legal Services Home Page: <http://pegasus.cc.ucf.edu/~stulegal>.

The Florida Legislature's home page, Online Sunshine, has the full text of all Florida Statutes: <http://www.leg.state.fl.us>. City and county Ordinances are available through the Municipal Code Corporation: <http://www.municode.com>.

# Florida Traffic Law

**Many students who are stopped for routine traffic violations are arrested for more serious charges** because a police officer observes evidence of illegal drugs, weapons, or alcohol in “plain view.” A search warrant is not required when such evidence is in plain view.

## **Buckle up for Safety -- or else!**

Florida requires Drivers and Passengers to buckle up. Drivers will be issued a costly ticket approximately \$114 and up. Passengers may be issued a ticket costing \$43.00 and up.

## **Prepare for long trips**

Be certain that all your lights and turn signals are operating properly.

## **Bicycles**

Florida law classifies bicycles as vehicles. When you ride a bicycle on a street you must obey all traffic control signs and signals. You must stop at stop signs and red lights. You must travel in the right-hand lane. You must travel in the correct direction on one-way streets. To ride at night, you must have a headlight and a tail light or rear reflector. Additionally you may be ticketed for wearing headphones while riding a bike.

You will be stopped and ticketed for any such violations. The prices of such tickets are \$62.50 and up depending on the county.

## **Thinking of not paying your ticket?**

The majority of states in the U.S. agree to suspend drivers' licenses when tickets are not paid in other states. Florida also routinely suspends Florida driver's licenses upon notification of convictions in other states. Your state may do the same.

## **Rollerblading**

It is illegal to skate on roadways under Florida law. Cities and counties may also prohibit rollerblading, skating, and skate boarding in certain additional areas such as parking lots and shopping centers. Signs are usually posted.

## **Mopeds and Motorcycles**

To operate a moped legally in Florida, you need a valid driver's license. If the engine displacement is more than 50 cubic centimeters, a special motorcycle endorsement is required. Driving without the required endorsement is a crime punishable by 60 days in jail and a fine of \$500.00.

# Mopeds and Motorcycles

If the “moped” cannot be pedaled like a bicycle, the “moped” is considered a motorcycle. Helmets are legally optional for moped riders 16 years of age or older. For your personal safety, helmets are always recommended, even for bicyclists.

Neither motorcycles nor mopeds may be driven on sidewalks. Mopeds may be pedaled solely by human power on sidewalks.

# Cost of Speeding Tickets

Other than speeding, moving violations carry a fine of \$73.00 to \$90.00 depending on the county. If you contest any ticket, the price may be increased to \$500.00! (If contesting a speeding ticket in a school zone or construction zone, it may be increased to \$1,000.)

You may also be ordered to take driving school, which will incur additional costs ranging from \$25 to \$50.

The cost of a speeding ticket is determined by the miles per hour over the limit. Prices are doubled in school zones or designated construction areas. The following chart summarizes the price of speeding tickets in **ORANGE COUNTY FLORIDA**.

MPH OVER LIMIT	UNLAWFUL SPEED	MPH OVER LIMIT	SCHOOL ZONE & CONSTRUCTION AREA
6-9	\$129	1-9	\$154
10-14	\$TBA	10-14	\$304
15-19	\$254	15-19	\$404
20-29	\$279	20-29	\$454
30 over the limit	Mandatory Court	30 over the limit	Mandatory Court

# Speed Traps

Be very careful if your travel plans include passing through the City of Waldo, located 14 miles northeast of Gainesville on State Road 24 and Highway 301. The American Automobile Association has designated Waldo as a “traffic trap.” Waldo has a school zone with a 15-mph speed limit. Look for signs with flashing yellow lights typical of all school zones. The prices of speeding tickets are doubled in school zones.

## Consent Searches

You do not have to consent to a search of your vehicle during a routine traffic stop. If you do consent to a search, you waive your constitutional protection against unreasonable search and seizures. No police officer ever stated, "Well, since you are willing to let me search you, you must not be hiding anything."

## Drug Sniffing Dogs

Florida law permits the search of a vehicle without consent following an alert by specially trained dogs. In some communities, a dog unit may arrive shortly after you are stopped for a traffic violation. You may not be legally detained longer than the time necessary for the officer to issue a traffic ticket unless the officer has reasonable suspicion to believe you are committing a crime.

## Alcohol Related Florida Law

## Open Containers

Florida prohibits open containers of alcoholic beverages in motor vehicles. Drivers receive a moving violation of \$73.00 and up. Passengers receive a non-moving violation of \$43.00 and up. (Fla. Stat. 316.1936)

If the open container is in the physical control of a passenger, the passenger is cited. If the open container is not in the physical control of a passenger, the driver gets cited.

Many cities and counties regulate public consumption of alcohol by prohibiting consumption or possession of open containers of alcohol on streets, sidewalks, parking lots, or beaches. An open container is any bottle or can which has been opened, or any flask, cup, or glass that contains any amount of alcohol.

If the police see you holding such an open container on any street, sidewalk, parking lot, or beach, you can be arrested for violation of the open container ordinance even if you are 21 years of age or older. If you are not 21 years of age or older, you can expect to be charged with the misdemeanor charge of possession of alcohol by a person under 21 years of age. If you have a fake ID, you may receive still another charge. Under Florida's revised fake ID statutes, many fake ID charges are felonies punishable by 5 years in prison and a \$5,000.00 fine!

In Florida most open container violations and all first offense underage possession of alcohol are punishable by a maximum of 60 days in jail and a fine of \$500.00.

## **“Signs, signs, everywhere are signs...”**

Cities and counties generally post signs at entrances to beaches and parks listing prohibited activities. By Florida law, alcohol is prohibited in most state parks. Please look for signs to avoid problems.

## **Underage Drinking**

You must be 21 years of age to purchase, consume, or possess alcohol. First offense underage possession of alcohol is a crime punishable by 60 days in jail and a fine of \$500.00. A second conviction is punishable by up to 1 year in jail and \$1,000.00 in fines.

## **Underage drinking and driving**

If you are under 21 years of age with a blood or breath alcohol level of .02 or higher and driving, your license will be suspended for six months. If you refuse to submit to the breath test, your license will be suspended for one year. If you weigh less than 240 pounds, one 12-ounce beer, five ounces of wine, or one ounce of liquor may put you over this limit. The suspension is effective immediately but the notice you receive allows you to drive for ten days after the stop. (Fla Stat. 322.2616)

## **Fake ID's**

Effective October 1, 1997, Florida's "fake ID" laws were amended to clarify that possession of any driver's license or state identification card not produced lawfully by the appropriate governmental agency is a felony punishable by five years in prison and a \$5,000.00 fine. (Fla Stat. 322.212)

Lending your driver's license or state identification card to a friend is a crime punishable by 60 days in jail and a \$500.00 fine. Using someone else's driver's license or state identification card is a crime punishable by 60 days in jail and a \$500.00 fine. Both parties may have their driver's license suspended for one year. (Fla Stat. 322.051, 322. 32, 322.27)

Identifying yourself to a police officer with a fake ID is a violation of the laws cited above. It may also constitute resisting arrest or obstructing an officer. This is a violation of Florida Statute 843.02 and 901.36, which is a first degree misdemeanor punishable by one year in jail and a fine of \$1,000.00. Signing another person's name to a traffic ticket is a 3rd degree felony punishable by up to 5 years in prison and \$5,000.00 fine.

Effective July 1, 1999, if you give a police officer a false name or use fake identification upon being arrested or legally detained, you are guilty of a first-degree misdemeanor punishable by one year in jail and a fine of \$1,000.00 for violating Florida's new statute 901.36. If your unlawful use of someone else's name or identification results in that person being adversely affected, you are guilty of a felony punishable by five years in prison and a fine of \$5,000.00. You may also be ordered to make financial restitution to the person adversely affected. One point should be clear: if you are stopped by the police, it is a very bad idea to give the police officer a false name or

## **Fake ID's**

false identification. While underage possession of alcohol is a crime, giving a police officer a false name or false identification is legally much more serious.

Finally, carrying a fake ID in a wallet with a real id can possibly lead to arrest for example if a police officer sees your "other" identification during a routine traffic stop, you may be arrested for possession of the fake ID.

## **DUI**

The State of Florida is very tough on driving under the influence. Currently the mandatory minimum penalties include fines and costs of over \$1000.00, DUI school, substance abuse screening, 50 hours of community service, and two 6-12 month driver's license suspensions: one effective the day of the arrest; the other upon conviction. You can also expect your insurance to be cancelled or the rates to skyrocket.

As stated in Florida Statute 316.193(1), you are guilty of driving under the influence and subject to mandatory minimum penalties stated above if you are driving or in actual physical control of a vehicle and:

- (a) You are under the influence of alcoholic beverages or chemical substances to the extent that "your normal faculties are impaired"

**OR**

- (b) You have a blood-alcohol or breath-alcohol level of .08 or higher.

If you take a blood or breath test and results are above .08, you will likely be convicted if the test results are admitted into evidence. If you refuse to take a blood or breath test, your driver's license will be suspended for one year. If you previously refused (from a prior event), a second refusal is a crime.

The arresting police officer will prepare a written report of your appearance, demeanor, and behavior, including the results of field sobriety tests. You may be convicted without a blood or breath test if this evidence convinces the jury that you were under the influence to the extent that your normal faculties were impaired.

If you are obviously intoxicated, the refusal may simply increase the length of your suspension. The only airtight defense to DUI is simple: If you drink, don't drive!

## **License suspended, cancelled, disqualified or revoked?**

If your license is revoked, cancelled, suspended or disqualified and you drive or are in actual physical control of a vehicle with knowledge of the suspension, cancellation, revocation or disqualification you commit a second-degree misdemeanor (Max penalty: 60 days in jail and \$500.00 in fines) for the first offense. Each additional offense raises the degree of penalty. Therefore, the second offense is a first-degree misdemeanor (Max penalty: one year in jail, \$1,000.00 fines), and the third offense can be prosecuted as a third-degree felony (Max penalty: 5 years in prison and \$5,000.00 fines).

## License suspended, cancelled, disqualified or revoked?

If the officer believes you do not have knowledge of the suspension, cancellation, or revocation, the officer can give you a non-criminal traffic infraction, which carries with it 3 points.

If you get either the criminal or non-criminal ticket, and your license was suspended for failure to pay a ticket, failure to appear in court, or failure to attend driver improvement course, then you have the option to resolve the ticket **prior to your court date**. Go to the clerk of the court in the county where you got the ticket, show proof of the reinstatement and clear up the charge without points and without having to go to court. This option is only available once in a 12-month period.

If your license is revoked, cancelled, suspended or disqualified and you possess the license with knowledge of the suspension, cancellation, revocation or disqualification you commit a second-degree misdemeanor (Max penalty: 60 days jail, \$500.00 fines) for the first offense. It is not a defense to this charge that you were not driving. Florida law requires that a person turn in any revoked, cancelled, suspended, or disqualified license upon learning of such suspension, cancellation, revocation, or disqualification.

## Florida Drug Law

A conviction for a possession offense will result in a two-year driver's license revocation, even if an automobile was not involved in the offense. A plea of No Contest or Guilty to a possession offense may also affect your financial aid eligibility.

### Marijuana

Cannabis and all other illegal drugs are classified and regulated in Chapter 893, Drug Abuse Prevention and Control, Florida Statutes. Most simple possession charges are third-degree felonies punishable by five years in prison and a fine of \$5,000.00.

Possession of less than 20 grams of cannabis is a first-degree misdemeanor punishable by up to 1 year in jail and a fine of \$1,000.00. Possession of paraphernalia is also a first-degree misdemeanor punishable by 1 year in jail and a fine of \$1000.00.

### “Roofies”

Flunitrazepam is a very powerful tranquilizer marketed overseas under the brand name Rohypnol. Possession of Flunitrazepam is a felony punishable by five years in prison and a fine of \$5,000.00.

Slipping a roofie into someone's drink constitutes delivery of a controlled substance punishable by 15 years in prison and a fine of \$10,000.00.

Having sex with a person under the influence without their consent constitutes sexual battery or rape punishable by 30 years in prison and a fine of \$10,000.00.



## **Nitrous Oxide a.k.a. “whippits”**

It is a second-degree misdemeanor (Max penalty: 60 days in jail, \$500 in fines) to inhale, possess with the intent to inhale, buy, sell, or transfer to inhale an amount of nitrous oxide less than 16 grams. Distribution, selling, purchasing, possessing, or transferring more than 16 grams of nitrous oxide is a felony of the third degree punishable by up to five years in prison and \$5,000.00 fines.

# **Florida Traffic and Criminal Law Procedures**

## **Traffic Court/Driving School/Affidavit of Defense**

For most moving violations, you have 30 days to elect one of three options. You might want to consult with an attorney to determine which choice is your best option.

1. Pay the ticket and receive points.
2. Elect to attend defensive driving school and avoid points. You must pay “court costs.” Court costs consist of the base ticket price minus 18% plus \$13.00 to \$30.00. Typically, you will have 60 days to complete school. This option may not be practical or effective in your home state.
3. Contest the ticket. Contesting the ticket subjects you to a fine not to exceed \$500.00. South Florida has attorneys who specialize in traffic ticket defense. Florida law permits nonresidents to file an Affidavit of Defense in lieu of personal appearance. You must contact the local court and post a bond to file an Affidavit of Defense. You should consult an attorney for assistance.

## **Deferred Prosecution/Pre-Trial Diversion/Pre-Trial Intervention**

You definitely need to consult an attorney if you have been arrested. Florida has 67 counties and legal options vary widely from county to county.

## **Deferred Prosecution/Pre-Trial Diversion/Pre-Trial Intervention**

Other communities may have Deferred Prosecution, Pre-Trial Diversion, or Pre-Trial Intervention programs. What these programs have in common is the dismissal of the criminal charges upon payment of a fine or completion of community service hours.

## **Will the arrest be on my permanent record?**

Yes. Even if the charges against you are dropped or dismissed, the fact that you were arrested or charged still exists in Florida public records available to anyone and everyone. While Florida law permits some arrest records to be sealed or expunged under certain circumstances, there will always be some record of the arrest.

Florida law requires the disclosure of sealed and expunged arrest records for certain applications such as applications for admission to the practice of law and applications for licensure or employment in sensitive positions having direct contact with children, the developmentally disabled, the aged, or the elderly, including, but not limited to school teachers, foster parents, and daycare owners, operators, and employees. Failing to disclose sealed or expunged arrest records in such applications is unlawful and grounds for denial or termination of employment or licensure.

Since your state may be even more strict than Florida in requiring disclosure of arrest records, if you have been arrested in Florida you will need an experienced attorney from your state to advise you on your legal obligation in completing employment, graduate school, or professional license applications, even if the arrest records have been sealed or expunged. In many cases, denying arrest for a minor offense may be viewed as far more serious indication of a lack of sound moral character than the offense itself!

## **Other Crimes and Consequences**

### **Burglary**

Subject to certain exceptions, burglary is defined as entering a dwelling, a structure, or a conveyance with the intent to commit an offense therein. Therefore, be aware that an individual standing outside of a car that punches a person sitting in a car commits both the offense of battery and the offense of burglary. Also, be aware that the penalty for burglary, depending upon the facts, can be punished by up to life in prison.

### **Theft**

A first time theft offense, where the value of the item is less than \$100.00 is up to 60 days in jail and a fine of up to \$500.00. A second offense or where the property is valued at \$100.00 or more, but less than \$300.00 is punishable by up to one year in jail and \$1,000.00 in fines. A third offense, or where the value is \$300.00 or more, is punishable by up to five years in prison and \$5,000.00 in fines.

Theft includes altering or removing a Universal Product Code (UPC).

## Theft

Additionally, upon the first conviction the court can suspend the individual's driver's license for up to six months. A second suspension shall be for one year. This law applies even if a vehicle was not involved in the theft.

## Use of two-way communication devices

It is a third-degree felony (punishable by up to five years in prison and \$5,000.00 in fines) to use any two-way communication device to facilitate or further the commission of any felony. Therefore, if a person uses a walkie-talkie to assist in committing a theft of over \$300.00, then that person could be prosecuted for both the third-degree felony of grand-theft and the third-degree felony of unlawful use of a two-way communication device.

# CRIMINAL PENALTIES Orange County Florida

### Pre-Trial Diversion:

- Also know as "deferred prosecution"; defined in Florida Statute 948.08
- For misdemeanors in Orange County, requires six months probation, \$300 costs of supervision, 40 hours community service and class attendance (dependent on offense)
- For felonies in Orange County, requires nine months probation, \$450 costs of supervision, 112 hours of community service and class attendance, dependent on offense
- Can be utilized one time only;
- If completed, record can be expunged

### Nolo Contendre/ No Contest Plea:

- Will resolve your case without admitting guilt.
- Sentence will likely be same as guilty plea

## NON-CRIMINAL ACTION

### Traffic Tickets:

- Failure to sign a traffic citation is a second-degree misdemeanor
- Fines are doubled for speeding in a school zone or a construction zone if roadwork is occurring
- Speeding up to five miles over the speed limit results in a warning only if stopped.

### Parking:

- In Orange County, parking in a handicapped parking space is a \$250 fine
- For any non-criminal traffic infraction, options are as follows:
  - Pay the fine within 30 days after the date of the citation.

- Parking:
  - Opt to go to driving school; reduced fine, no points on license, must pay for driving school
  - Request a hearing; can submit your defense in writing for the court to consider on a form “Affidavit of Defense”
  - Can plead no contest at hearing; if no prior tickets in past year, no points, fine, court costs = \$35. Court may also order completion of driving school.
  - Orange County offers a payment plan option to pay traffic fines; you must fill out a financial affidavit and establish a plan with a financial counselor.
  - Traffic fines may be paid with a credit card in Orange County.