

BILL NO.: 4597

ORDINANCE NO.: _____

Introduced by: Council Present

AN ORDINANCE FOR THE BERKELEY POLICE DEPARTMENT GENERAL ORDER #60 “DUI ENFORCEMENT” POLICY

WHEREAS, The City of Berkeley hereby finds and declares this ordinance is necessary, appropriate, and in the best interest of the City of Berkeley, Missouri, in accordance to the CALEA standards.

Now, Therefore, Be it ordained by the City Council of the City of Berkeley, Missouri, as follows:

Section 1 The City of Berkeley, Missouri, Council hereby adopts the attached DUI Enforcement Policy in compliance the CALEA standards.

Section 2 The attached agreement is hereby incorporated herein and made a part of this ordinance, as if fully set out herein.

Section 3 This Ordinance shall be in full force and effect from and after its passage.

1st Reading this _____ day of _____ 2018

2nd Reading this _____ day of _____ 2018

3rd Reading, PASSED and APPROVED, this _____ day of _____ 2018

Theodore Hoskins, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved As To Form:
Donnell Smith, City Attorney

Final Roll Call:

Mayor Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Kirkland	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Mathison	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman-at-Large McDaniel	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Mitchell	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Williams	Aye ___	Nay ___	Absent ___	Abstain ___

	BERKELEY POLICE DEPARTMENT GENERAL ORDER	GENERAL ORDERS: 60
DUI ENFORCEMENT		
ISSUE DATE: 1/19/2018	EFFECTIVE DATE: 2/19/2018	DISTRIBUTION: SWORN PERSONNEL
		RESCINDS: ALL PREVIOUS VERSIONS
ACCREDITATION STANDARDS: CALEA 61.1.5, 61.1.10		NUMBER OF PAGES: 8

PURPOSE: The purpose of this directive is to establish procedures and guidelines for the enforcement of Driving while Under the Influence (DUI) of Alcohol and/or chemical, or controlled substances in the most commonly encountered situations. [CALEA 61.1.5 a]

POLICY: Drivers impaired by alcohol and/or drugs pose a threat to community safety. The education, detection and apprehension of DUI drivers is an important role for the Berkeley Police Department. It is the policy of the Berkeley Police Department to arrest and remove impaired drivers from the streets in an effort to reduce deaths, injuries and property damage caused by impaired driving.

RULES AND PROCEDURES:

NO DRIVING PRIVILEGES” [CALEA 61.1.5 b]

The patrol officer is frequently in the position of encountering drivers, following the detection of a traffic violation or other contact, who are unable to produce a valid driver’s license. This could be the result of various actions not only of the driver, but of the court and/or the Department of Motor Vehicles (DMV). The officer should check the operator’s driving record through DMV by name and date of birth or by Missouri Driver’s license number for the current status of driving privileges. This check should include Missouri and any other state through which the driver may have a license. If the violator has a valid license, then the officer’s actions should be dictated by the initial violation or contact.

- A. If the driver does not have a valid driver’s license through DMV on-line records, the officer should determine if the violator was ever issued a license through this state or their state of residency. If it can be determined that no license was ever issued, the officer should cite for “No Operator’s License.”
- B. If the violator was issued a license in this state or their state of residence, and the violator’s driving privileges have been revoked or suspended, the officer should:
 - 1. Cite for “No Operator’s License” for out-of-state licensed drivers, and
 - 2. Cite for “Driving While Suspended” for Missouri licensed drivers.
- C. In either case the driver should not be allowed to drive the vehicle from the location of the stop, and other arrangements should be made. If the vehicle is legally parked or on private property the vehicle should not be towed.

DUI DETECTION AND APPREHENSION [CALEA 61.1.10]

- A. Officers shall be trained in the detection of impaired drivers during the Missouri Peace Officer Standards and Training approved academy program (POST), during their Field Training Program and through advanced courses when available.
- B. Selective DUI enforcement should include assignment of personnel based on an analysis of times and locations where a significant number of violations and/or crashes involving impaired drivers have occurred.
- C. The Berkeley Police Department will work with community groups and institutions to provide information and instruction related to alcohol-impaired driving reduction through meetings and presentations.
- D. Officers shall follow testing procedures as delineated in Berkeley Municipal Code Chapter 342 ALCOHOL-RELATED TRAFFIC OFFENSES, when there is suspicion of an intoxicated driver.

DRIVING UNDER INFLUENCE (DUI) PROCESSING PROCEDURES [CALEA 61.1.11]

The goal of the Berkeley Police Department with DUI enforcement is to detect, investigate, and apprehend alcohol and drug affected drivers to reduce the number of crashes and violations involving this type of driver.

This procedure involves four separate phases:

1. Vehicle operation,
2. Driver Contact,
3. Pre-arrest screening,
4. Arrest and booking,

A. Vehicle Operation

Observe the vehicle in operation and note any initial cues of a possible Driving Under the Influence (DUI) violation. The officer must decide if probable cause exists to stop the vehicle, to conduct further investigation to determine if the driver may be impaired or for another unrelated traffic violation. The officer is not committed to arresting the driver for DUI based on the initial observation, but should concentrate on gathering all relevant evidence which may suggest impairment.

B. Driver Contact

Approach, observe, and interview the driver and note any evidence of impairment. This may include face to face contact and conversation; and overall assessment of the driver's condition. During the initial contact with the driver, the officer should evaluate the driver's physical condition to determine if probable cause exists for conducting field sobriety tests. The Missouri Supreme Court has ruled field sobriety tests are a search under both state and federal constitutions. This does not preclude an officer from seeking initial consent of the driver to perform field sobriety tests. Areas of concern may include, but are not limited to: odor of alcoholic beverage, marijuana, and/or "cover up" odors; speech patterns; demeanor; ability to follow directions; coordination; and general appearance. All Police Department marked patrol vehicles are assigned video/audio recording through either body cameras or dash camera. The recorder should be checked at the start of shift to ensure proper functioning. The

recorder should be used when conducting an investigation of DUI as outlined in General Orders 28 "IN-CAR AND BODY WORN AUDIO AND VIDEO RECORDINGS".

The following procedure will be followed when using a recorder:

1. Activate the recorder as required for citizen contact. Identify yourself, the date, and the time.
2. Advise the suspect the conversation is being recorded and the reason for the traffic stop/contact.
3. If the suspect refuses the field sobriety tests, advise him/her any refusal to submit to field sobriety tests is admissible as evidence in any subsequent civil or criminal proceeding arising from the allegations the suspect was DUI.
4. Advise the suspect of rights per Miranda at such point as custodial interrogation begins.
5. Record any conversation during the time the suspect is being transported and booked.
6. Advise the suspect whenever the recorder is turned on or off, including the date and time.

Whenever circumstances do not permit the recording of conversations with the suspect, admissions or remarks should be included in the officer's preliminary investigative report.

C. Pre-Arrest Screening

Whenever possible, Berkeley Police officers will include standard field sobriety tests in any DUI investigation. The following standardized field sobriety tests will be used:

1. Horizontal Gaze Nystagmus (qualified officers only)
2. Walk and Turn
3. One Leg Stand

Any combination of the following field sobriety tests may be used in conjunction with the above, if the officer has received SFST (Standardized Field Sobriety Test) certified and documented training:

1. Modified Attention (Romberg test),
2. Finger to Nose,
3. Alphabet,
4. Counting,
5. Finger Dexterity,
6. Internal Clock,

The officer will note the responses to these and other tests given on the "Alcohol Influences Report" form or in the narrative of their preliminary investigative report.

D. Arrest and Booking

1. Once the officer determines the suspect is DUI, the officer shall advise the suspect he is under arrest for Driving Under the Influence of Intoxicants. The suspect will be taken into custody, searched and transported to the Berkeley

Police Department, St. Louis County Correctional Facility, or other booking facility, with Intoxilyzer equipment.

2. If the arrestee has caused a crash and another person was injured, the suspect should be charged with Assault 2nd Degree and warrant application made to the St. Louis County Prosecuting Attorney on all charges while the suspect is in custody.
3. Other than the above, the suspect may be charged with either Municipal or State charges, however if there are multiple charges, they must all be charged in the same court. If the arrestee has two prior convictions for DWI, the third offense is a felony and warrant application must be made to the St. Louis County Prosecuting Attorney.
4. If the suspect has two prior convictions and refuses to provide a breath, blood, or urine sample, the arresting officer shall apply for a search warrant to have a blood specimen taken while the suspect is in custody. The search warrant must be applied for in an expedient manner in order to preserve the evidence results.
5. An arrestee that is injured or extremely intoxicated (.30 or higher) should be taken to the hospital for examination prior to booking. The name of the examining physician and a diagnosis will be included in the report. A fit-for-confinement form from the hospital will be attached to the report.

INTOXILYZER BREATH TESTS

- A. The suspect must be observed for a minimum of 15 minutes, continuously, between the time of the arrest and the time for the breath test. The 15 minute continuous observation period of the suspect must be under the supervision of the officer who will be conducting the breath test.
- B. The breath test can be administered only by an officer holding a current Type II or Type III permit, specific to the instrument being used, from the Missouri Department of Health.
- C. The suspect must remain in the full view of the breath test operator and must not be allowed to consume any food, liquids, medication, or be allowed to smoke prior to testing.
- D. If the arrestee requests to speak to an attorney, he must be allowed 20 minutes in which to attempt to contact an attorney and have him present. The arresting officer will record the name and number of the arrestee's attorney in the police report. If after 20 minutes the arrestee still refuses to submit to a breath test, it shall be deemed and reported as a refusal.
- E. The Printout of the breath test instrument is a two-part form. The front copy will be properly packaged as evidence and submitted to ETU for safekeeping. The second (card stock) copy will be attached to AIR form.

BLOOD TESTS

- A. Should be taken only if the arrestee is physically unable to submit to a breath test; or if the breath test is refused and the suspect was involved in a felony.
- B. Missouri law authorizes an officer to obtain a blood sample from a DWI suspect (by force if necessary) after a search warrant has been obtained.
- C. The blood sample must be drawn by a licensed medical professional at a secure facility. The officer should document in the report, the name of the person drawing the sample, date, time, and location.
- D. Private medical facilities are not obligated by law to comply with an officer's request to draw blood.
- E. The officer should witness the drawing of the sample and take custody of it. The officer will then place the evidence into the refrigerated evidence holding at the Berkeley Police Department for safekeeping and analysis. If conveyed to the St. Louis County Police Lab, The officer will obtain a St. Louis County P.D. Evidence Receipt that will be attached to the DWI report.

BLOOD ALCOHOL TEST RESULTS

The results of the blood alcohol test will determine the type of report required:

- A. CMV licensed drivers only: .04% to .079% - is enough to charge the driver with "Driving a Commercial Motor Vehicles While Having an Alcohol Concentration of .04% or more." If more than .079%, charge the driver with DWI.
- B. Less than .08%: suspect may be charged with DWI if additional evidence supports the charge.
- C. If .08% and above: Suspect will be charged with DWI and the Missouri Department of Revenue Administrative Suspension procedure must be followed and appropriate forms completed (do not use Administrative Suspension procedures for DWI on private property).

DRUG RECOGNITION EVALUATIONS

- A. Instances where an officer observes impairment and makes a DWI arrest and the results of the blood alcohol test, usually .00% to .03%, is not consistent with the observed impairment. (Note: The blood alcohol results need to be significantly low for observed impairment.)
- B. The arresting officer shall complete the Alcohol Influence Report in the usual manner, detailing in the narrative section the impairment observed and probable cause for arrest. The report should also include the Standardized Field Sobriety Tests.
- C. The arresting officer shall request a certified Drug Recognition Evaluator (D.R.E.) for a drug evaluation.

- D. The D.R.E. shall conduct an evaluation following standardized systematic procedures as outlined in the D.R.E. manual.
- E. The D.R.E. shall complete a supplemental report, package all evidence and make appropriate warrant application if needed.
- F. All urine/blood samples will be conveyed to the St. Louis University Toxicology Lab by the D.R.E.
- H. Reports involving D.R.E. shall not be forwarded to the Missouri Department of Revenue until a disposition is received from the court.

TEST REFUSAL PROCEDURES

Drivers who refuse to submit to blood alcohol testing will have their license revoked for one year, effective 15 days after the arrest. Within 30 days they may file a petition contesting the revocation.

- A. Issue the arrestee a Notice of Revocation for Refusal to Submit to An Alcohol Chemical test (DOR form 4323). Issue the original copy to the driver and the second copy is attached to the Alcohol Influence Report. This form serves as the arrestee's 15 day driving permit.
- B. Seize any valid Missouri operator's license from the arrestee. Mark the appropriate boxes on the 15-day permit. Attach the license, in a clear plastic envelope, to the second copy of the form.
- C. The notarized Alcohol Influence Report (with chemical test refusal box checked), with any seized operator's license, will be forwarded by the BFO clerk to the Missouri Department of Revenue.
- D. If the suspect has two prior convictions and refuses to provide a breath, blood, or urine sample, the arresting officer shall apply for a search warrant to have a blood specimen taken while the suspect is in custody. The search warrant must be applied for in an expedient manner in order to preserve the evidence results.
- E. For CMV drivers, use the Affidavit of Chemical Refusal (DOR form 4232).

DWI REPORTS

- A. The Alcohol Influence Report (DOR form 2389) will be used for all DWI arrests.
- B. If the arrest also involves a crash, the S.T.A.R.S. forms (using the same complaint number) will be attached, following the Alcohol Influence Report.
- C. Prior to signing the report, photocopy the report, sign both copies and have the signature notarized by a shift commander.

ADMINISTRATIVE SUSPENSION PROCEDURES

If the results of the blood alcohol test are .08% or greater, and the DWI offense did not occur on private property, the officer is required by law to prepare and issue the

following administrative suspension forms which will be forwarded to the Missouri Department of Revenue by the BFO clerk:

- A. Temporary 15 Day Driving Permit (DOR form 2387): Do not issue permit if arrestee's license is suspended or revoked, or if the arrestee is otherwise unlicensed.
- B. The officer will confiscate the arrestee's license or previously issued temporary 15 Day Driving Permit. Do not seize a summons being used in lieu of a license or a receipt for a new or duplicate license which the arrestee has not yet received. The officer will not confiscate an out-of-state license.
- C. The officer will issue a Notice of Suspension /Revocation of Your Driving Privilege (DOR form 2385):
 - 1. Issue the original (white) copy to the arrestee;
 - 2. Attach the second copy (yellow) to the AIR report.
- D. A copy of the DWI citation with the arrestee's operator's license and copy of the Alcohol Influence Report (DOR form 2389) with notarized original signature of officer (do not staple) will be attached.

ZERO TOLERANCE

The Zero Tolerance law makes it illegal for anyone under the age of 21 to drive or operate a motor vehicle with ANY measurable alcohol in their system. The law defines "measurable" as any BAC higher than .02%. Violations of this law are ADMINISTRATIVE, and not criminal; however, due to the recent legislative changes, persons suspected of violating the law must submit to a chemical test. Refusal to submit to the chemical test will result in the revocation of the subject's license. The method for handling Zero Tolerance violators arrested for suspicion of DWI will generally be as follows;

- A. When a minor is arrested for DWI, but has a BAC of less than .08% (between .02%.and .079%):
 - 1. Process the minor as you would a normal DWI and, depending on the BAC, issue a summons or refer the matter to the municipal prosecutor.
 - 2. Complete DOR Form 2385, Notice of Suspension/Revocation of Your Driving Privilege, for the minor and seize his/her valid Missouri Driver's License.
 - 3. Report writing would consist of a normal DWI report.
- B. For Zero Tolerance violations without DWI, the officer must complete the following paperwork to process the violation:
 - 1. Alcohol Influence Report (AIR) - Page 1: Time, Date, Location and Subject/Vehicle information. Page 2: Not applicable. Page 3: Entire page, Page 4: Short narrative documenting the Zero Tolerance violation.
 - 2. Operation Check list (Page 3 of AIR) and/or BAC printout. (The PBT cannot be used to determine BAC for the purpose of Zero Tolerance violations.)

- 3. DOR Form 2385 (Administrative Suspension) or Form 4323 (Refusal), whichever is applicable.
- 4. Zero Tolerance violations without DWI are NOT criminal and a minor shall not be arrested solely on a Zero Tolerance violation. In addition, a minor who violates Zero Tolerance (without any other criminal or traffic violations) shall NOT have their vehicle towed.

DRAFTED BY: Eye-Liza Conner	DATE: 12/7/17
BY ORDER OF: ART JACKSON MAJOR	DATE: 1/4/18
APPROVED BY: Public Safety Committee	DATE: 1/19/18
APPROVED BY: Berkeley City Council	DATE: 2/19/18