

DEPARTMENT GENERAL ORDER 10-3

OFFICE of the CHIEF OF POLICE
REPLACES: General Order 09-26A

DATE: January 11, 2010

DRIVING UNDER THE INFLUENCE

I. PURPOSE.

To establish guidelines governing the enforcement of alcohol and/or drug related traffic enforcement.

II. DEFINITIONS.

Alcohol Concentration - The amount of alcohol in a person's blood at the time of the act alleged, as shown by chemical analysis of the person's blood, breath, urine, or saliva.

Driving While Intoxicated - A person commits the crime of "Driving While Intoxicated" if he/she operates a motor vehicle in an intoxicated or drugged condition. A person is in an intoxicated condition when he/she is under the influence of alcohol, a controlled substance, or drug, or any combination thereof. The person may be charged for any BAC reading of .01 and greater if impairment can be shown.

Driving with Excessive Blood Alcohol Content - A person commits the crime of "Driving with Excessive Blood Alcohol Content" if he/she operated a motor vehicle in the State of Missouri with eight hundredths of one percent (.08) by weight of alcohol in their blood. With this charge, impairment is not necessary.

License Revocation - The termination, by formal action of the Missouri Department of

Revenue, of a person's license. A revoked license is not subject to renewal or restoration except that an application for a new license may be presented and acted upon by the Department of Revenue after the period of revocation expires.

License Suspension - The temporary withdrawal, by formal action of the Missouri Department of Revenue, of a person's license. The suspension shall be for a period specifically designated by the Department of Revenue pursuant to the provisions of Sections 302.500 to 302.540 of the Revised Missouri State Statutes.

III. D.U.I. ENFORCEMENT PROCEDURES.

The detection and arrest of impaired drivers differs significantly from other traffic violations. Specific statutes and regulations govern driving while under the influence of alcohol and/or drugs, to include implied consent, chemical tests for intoxication, and established limits of impairment or intoxication. These statutes and regulations include many provisions which affect an officer's authority, and establish procedures for conducting chemical tests and initiating the sanction process (RSMo 577.010 and 577.012, 577.020 through 577.041, and City of Clayton Ordinances).

As a result, when a stop is made for a suspected alcohol/drug related traffic violation, the officer should closely observe the suspect driver's physical ability and demeanor. A field sobriety test should also be conducted and the results noted. If such a test cannot be administered, for whatever reason, that should also be noted. The findings of these tests will be used by the Director of Revenue in subsequent administrative hearings and will possibly strengthen any possible criminal case.

After conducting an initial examination at the scene of contact, and upon determining that sufficient probable cause exists to effect an arrest, the suspect will be taken into custody. The officer will then request the individual submit to a chemical test as required by the State of Missouri and inform same of the parameters of the Missouri Implied Consent Law:

1. You are under arrest for driving while intoxicated.
2. To determine the alcohol/drug content of your blood, I am requesting you submit to a chemical test of your blood, breath, saliva, or urine.
3. If you refuse to take the test, your driver's license shall immediately be revoked for one year.
4. Evidence of your refusal to take the test may be used

against you during prosecution in a court of law.

5. Having been informed of the reasons for requesting the test, will you take the test?

The arresting officer will then arrange for a chemical test to determine the Blood Alcohol Concentration (BAC) of the suspect. Several different types of tests are available (BAC Verifier, Breathalyzer 900/900A, Alco-Analyzer 200, etc.), but the breathalyzer test is the most common test offered by an officer. Should the suspect refuse the officer's offered test and request another type, the officer is not required to comply with the request. The test offered by the officer is the officer's only requirement; however, the officer may offer a second type of test (e.g. blood, urine, etc.) but not a third.

The suspect must be observed for a fifteen (15) minute period prior to his/her taking a breathalyzer test to ensure that the individual does not consume a substance capable of skewing the test results. To accomplish this, the officer should visually inspect the inside of the suspect's mouth to ensure its empty. Should the suspect place something in his/her mouth or vomit, an additional fifteen minute observation period will be initiated.

Should a suspect ask to speak to an attorney prior to taking a chemical test, the arresting officer will provide twenty (20) minutes for the individual to contact legal representation. At the end of that time, if the suspect continues to refuse to submit to the test, or continue to demand an attorney, his/her actions will be deemed a refusal to take the chemical test. In the event an attorney responds to the testing location to represent the defendant, the attorney may observe the proceedings only. Generally there is no talking during a test, except as directed by the examiner. In addition, any attorney who is present during the testing process will not be permitted to interfere with the testing process in any way. Should they become disruptive or refuse to comply with requests to remain silent, the attorney shall be removed.

In regard to consent issues, it should be noted that in accordance with state law, "Any person who is dead, unconscious, or is otherwise in a condition rendering him/her incapable of refusing to take a test shall be deemed not to have withdrawn the consent provided, and the test may be administered."

It should also be noted that pursuant to RSMo 577.029 only "A licensed physician, registered nurse, or trained medical technician at the place of his/her employment, acting at the request and direction of the law enforcement officer, shall withdraw blood for the purpose of determining the alcohol content of the blood, unless such medical practitioner, in his/her good faith medical judgement, believes such procedure would endanger the life or health of the person in custody. Blood may be withdrawn only by such medical personnel, but such restrictions shall not apply to the taking of a breath test, a saliva specimen, or a urine specimen." Blood drawn as a specimen for chemical testing shall be delivered to the St. Louis County Police Laboratory as soon as possible. Blood samples shall not be stored at this department.

Should chemical test results disclose the suspect's BAC level to be .08 percent or greater, the suspect is considered to be intoxicated and may be charged with a violation of the City of Clayton Ordinance covering DWI offenses, or RSMo statutes 577.010 or 577.012. In such a case, the arresting officer will be required to perform the following:

- A. Contact communications and request dispatch personnel assign a report number. However, should the DWI suspect be involved in an auto accident or criminal offense, a separate report number will be drawn for the additional offense.
- B. Complete the Alcohol Influence Report #2389 (A.I.R.). Should the suspect refuse to answer the questions listed on the Alcohol Influence Report, the arresting officer will place the word "Refused" across the question section of the form. Should the suspect refuse to answer some of the questions posed by the Alcohol Influence Report, the arresting officer will write "Refused" in each area designated for the suspect's response.
- C. The officer will attach a copy of the computerized blood alcohol test results to the A.I.R. (Note: the breathalyzer operator must complete his/her portion of the form).
- D. Complete a summons for City ordinance or state statute violations and attach it to the A.I.R. (Note: a factor for consideration here, is that a conviction for a municipal ordinance violation can only be used to graduate an offense to a higher level under specific circumstances. The municipal judge is required to be an attorney, and the suspect has to have been represented by counsel or waived his right to same.
 1. Complete a "Probable Cause Statement" and attach same to each DUI summons (both City and/or State violations). The form will then be reviewed by the officer's supervisor and forwarded to the court in addition to all other related documents and forms.
- E. Seize the suspect's operators/chauffeurs license and issue a fifteen day temporary driving permit/notice of suspension/revocation. (Note: if the chemical test results disclose a reading of less than .08, the operators or chauffeurs license should not be seized.) Attach a copy of the fifteen day temporary driving permit/notice of suspension/revocation to the Alcohol Influence Report.

If the suspect is driving on an out-of-state operators/chauffeurs license, the arresting officer will not seize the license, but in accordance with DOR

instructions will issue the vehicle operator a DOR suspension form.

- F. In the event the suspect's vehicle is to be towed, same shall be accomplished in accordance with department procedures.
- G. Officers will complete the Recoupment of Costs form and attach same to the Alcohol Influence Report.
- H. Complete a booking sheet, and unless circumstances dictate otherwise, release the suspect on a summons. Exceptions to this procedure will be if warrant application is to be made for a felony alcohol or drug driving offense, or the suspect has a prior DWI conviction on their record. In the former case, the suspect should be lodged at the St. Louis County Justice Center. In the latter instance, where the suspect has a prior DWI conviction, the suspect should be booked and then released pending warrant application.

Moving violations written in connection with a DWI summons should be submitted to Municipal Court.

- I. The officer will sign the Alcohol Influence Report and have their signature notarized.
- J. Submit the Alcohol Influence Report and all pertinent attachments to the on-duty supervisor for review and approval.

Upon completion of his/her review, the supervisor will forward the Alcohol Influence Report to the Administrative Division for processing.

IV. REFUSAL TO TAKE CHEMICAL TEST.

If a suspect refuses to take the chemical test offered (to include driver's from out-of-state), the arresting officer will not complete a fifteen day driving permit/notice of suspension/revocation, but will complete the refusal to submit to alcohol/drug chemical test notice of revocation (Form 4323). The original copy of the form will be provided to the defendant, while the second copy of the form shall be attached to the Alcohol Influence Report (A.I.R.).

Upon completion of the test refusal form, the suspect shall be booked and processed in accordance with the procedures established herein.

V. FELONY D.W.I.

All first and second offenses may be filed in state court or the appropriate municipal court. Municipal convictions and probation cases can be used to enhance offenses commencing September 1, 2009. Third and subsequent offenses should always be filed in state court even if the suspect's record is not sufficient for enhancement.

All felony cases must be filed in state court, if a driver's arrest record shows multiple arrests/convictions for DWI he/she should be taken into custody and held while the officer applies for an arrest warrant if at all possible. At the time of the warrant application the officer must present a completed incident report, AIR, and a current copy of the suspect's criminal and DOR record.

If a prior conviction is from the officer's jurisdiction, the officer must obtain the appropriate records. The office of Prosecuting Attorney will obtain records from other jurisdictions. The officer need not present the certified copy at the time of the application but must provide the proper copy as soon thereafter as practical.

In all cases involving death, serious personal injury or substantial property damage, the case should be filed in state court and the officer should determine the suspect's blood alcohol content. If the suspect refuses the breathalyzer or is unconscious due to injuries, or is otherwise unable or refuses to consent to providing a blood sample, the officer should contact the duty prosecutor for the purpose of obtaining a search warrant to obtain the blood sample.

The officer should also contact the duty prosecutor to obtain a search warrant for any suspected felony DWI (regardless of injury or property damage) in which the driver refuses to submit to a chemical test.

When applying for a search warrant the officer must complete and present to the prosecutor the attached search warrant and affidavit.

All contact with the suspect should be recorded (either video/audio). A copy of such recording must be presented at the time of warrant application or as soon thereafter as possible.

VI. ZERO TOLERANCE.

In May of 1998, the Missouri State Senate approved Senate Bill 638 which expanded the "Zero Tolerance Law." This legislation implemented two changes in existing law. These are: 1). If a minor is believed to be driving with a BAC level of .02 or higher, and he/she refuses the chemical test, the individual will lose their operator's license for one year, and 2). The bill-expands alcohol related traffic offenses to include involuntary manslaughter and assaulting a police officer for purposes of prior and persistent offender charges.

It should also be noted that officers will treat minors (17 to 21 years of age) and juvenile violators of the Zero Tolerance Law in the same manner as that utilized with adult offenders. However, juvenile offenders must be kept separate (out of sight and sound) from adult offenders, and should the offense be considered a felony, same shall be referred to the Family Court.

BY ORDER OF:

THOMAS J. BYRNE
Chief of Police

TJB:mj