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DEPARTMENTAL GENERAL ORDER

OLIVETTE POLICE DEPARTMENT OFFICE OF THE CHIEF OF POLICE

Index as:

Driving While Intoxicated

Sobriety Checkpoints

Zero Tolerance

Field Sobriety Testing

DWI ENFORCEMENT

I. PURPOSE

A. It is the purpose of this General Order to establish procedures to be followed in the handling of Driving While Intoxicated suspects.

B. The objective of DWI enforcement is the reduction of alcohol and/or drug related traffic crashes. All officers will be alert for DWI violations and will take appropriate actions when violations are detected.

In addition to the vigilance of patrol officers, the Department will conduct special DWI enforcement programs including special DWI patrols which may include overtime patrols targeting specific roadways where statistics show a higher than normal rate of DWI related crashes or arrests; and sobriety checkpoints may be conducted as a deterrent to drinking and driving through an increased public awareness of the greater chance of apprehension of violators who would normally escape detection unless observed in some other violation or were involved in a crash.

C. All intoxication-related arrest information is uploaded to DWITS via the departmental record management system, and subsequently forwarded to the central repository as required by section 43.503 RSMo. The Department shall furnish, without undue delay, to the central repository, fingerprints, photograph, and if available, any other unique biometric identification collected, charges, appropriate charge codes, and descriptions of all persons who are arrested for such offenses on standard fingerprint forms supplied or approved by the highway patrol or electronically in a format and manner approved by the highway patrol and in compliance with the standards set by the Federal Bureau of Investigation in its Automated Fingerprint Identification System or its successor program.

II. DEFINITIONS

A. **INTOXICATED CONDITION** – In Missouri, a person is in an “intoxicated condition” when he/she is under the influence of alcohol, a controlled substance, or drug or a combination thereof.

B. **DWI** – Driving While Intoxicated

C. **BAC** – Blood Alcohol Content

D. **RSMO** – Revised Statutes of Missouri

E. **AIR** – Alcohol Influence Report

F. **DOR** – Missouri Department of Revenue

G. **DOH** – Missouri Department of Health

H. **SFST** – Standard Field Sobriety Test

I. **HGN** – Horizontal Gaze Nystagmus

J. **VN** – Vertical Nystagmus

K. **OLS** – One Leg Stand

L. **WAT** – Walk and Turn

M. **REFUSAL** – Verbally refuses, or by inaction or unresponsiveness, refuses one or both requested chemical tests in any manner.

N. **CHEMICAL TEST** – The policy of this Department is to only request the State of Missouri recognized breath or blood test.

O. **PBT** – Preliminary Breath Test Instrument (Intoximeter Alco-Sensor FST or its successor equipment)

P. **EVIDENTIARY BREATH INSTRUMENT** – Intoximeters EC-IR 2

III. APPLICABLE LAWS

A. City of Olivette Ordinance:

Section 342.020 – Driving While Intoxicated

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The charge of Driving While Intoxicated will be used if the suspect has no (zero) prior DWI/Driving with Excessive BAC *arrests*. If the suspect has one (1) or more alcohol related driving *arrests*, he/she will be charged with DWI-Prior Offender.

B. Missouri State Charges:

1. RSMO 577.010 – Driving While Intoxicated

This charge will be used when the suspect has two or more alcohol related driving arrests. This is also used when the results of the chemical test(s) are not known. Blood samples seized while at the hospital may take two (2) or more months to be analyzed once taken to the Missouri State Highway Patrol Lab or service center.

2. RSMO 302.405 – Abuse and Lose – Persons 21 years of age and older

Any person in possession of a controlled substance while operating a motor vehicle may be charged with “Abuse and Lose”. The amount of controlled substance is not a factor. Abuse and lose administered by, and is controlled by the Olivette Municipal Court.

3. RSMO 302.400 – Abuse and Lose – Persons **under** 21 years of age (see juvenile section)

Any person in possession of a controlled substance or alcohol while operating a motor vehicle may be charged with “Abuse and Lose”. The amount of controlled substance or alcohol is not a factor.

4. RSMO 577.020 – Zero Tolerance

a) This charge is only used for persons under 21 years of age with a BAC from .02 to .079. In the Implied Consent warnings on page three (3) of the AIR, there is a box for “Zero Tolerance”. This box is normally checked when the suspect is underage and DWI. If the suspect agrees to take the breath test, do not check the box until the results are obtained. If the test result is .08 or greater, the officer will charge an underage suspect with Driving While Intoxicated. If the suspect is obviously impaired and refuses a chemical test, charge him/her with RSMO 577.010 DWI.

b) Zero Tolerance is an administrative process only that is handled through the DOR and the DOH. No summons will be issued unless there is another unrelated offense. If Zero Tolerance was the only reason for the suspect being arrested, there will be no booking procedures done. Simply complete the AIR and CARE reports. Persons suspected of violating this

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law must submit to a chemical test. Refusal to submit to the chemical test will result in the arrestee being processed as DWI.

5. The State of Missouri has a progressive scale on the prosecution of repeat offenders. The following is an example of how the scale is defined:
 - a) First time offense – class B misdemeanor
 - b) Second Offense – If the suspect has a prior DWI *conviction*, he/she will be charged with a class A misdemeanor. The booking charge description will state “Prior Offender”.
 - c) Third Offense – If the suspect has two (2) or more alcohol related traffic convictions, the third conviction will be a class D felony. The booking charge description will state “Persistent Offender”. IF A FELONY DWI SUSPECT REFUSES EITHER CHEMICAL TEST, A SEARCH WARRANT MUST BE OBTAINED via the St. Louis County Prosecuting Attorney’s Office. If a search warrant is necessary, follow the electronic search warrant procedures.
 - d) When creating a search warrant, the forms request the social security number of the suspect in the warrant application, affidavit, and warrant itself. These items are encrypted to keep the information confidential. If you only use the last four of the SSN (ie: XXX-XX-2788) the information will not need be encrypted with the codes listed in the manual, per St. Louis County Prosecuting Attorneys office.
 - e) If a search warrant is granted and executed, it is the responsibility of the arresting officer to complete the return and inventory and have the search warrant registered with the Associate Circuit Court. A warrant packet will need to be completed, that includes the DWITS printouts showing the two prior convictions of the offender and must be submitted to the prosecutor’s office **within 30 days**.

IV. TESTING

A. Field Sobriety Tests

1. There are several field tests that are widely used in Missouri. The Standard Field Sobriety Tests consist of the following three (3) tests:
 - a) The One Leg Stand (OLS);
 - b) The Walk and Turn (WAT); and
 - c) The Horizontal Gaze Nystagmus (HGN).

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2. Road conditions, weather and the suspect's safety should be considered when deciding to administer these tests.
3. If the officer has no formal training in the SFST's, do not attempt to administer these tests. Common sense field sobriety tests are still acceptable in the courts of Missouri. Common sense tests include alphabet tests, counting tests and divided attention tests.
4. Olivette officers will utilize a six test battery of field sobriety tests when feasible. The standard SFST's (HGN, WAT, OLS) will be administered. Officers will also administer an alphabet test, a counting test, and use the supplied preliminary breath testers (PBT).

B. PBT Test

1. This test may be administered by the officer and no certification or license is required.
2. Before using the Preliminary Breath Test (PBT), s/he will read the instruction manual and be familiar with device nomenclature.
3. This test will not be used as the only field sobriety test. These instruments are not certified by the DOH. Arrest decision will not solely be based on the PBT but a totality of the circumstances.
4. Officers should use a new mouthpiece for **each** attempt made by the suspect to supply an adequate breath sample.
5. When using the PBT as a field sobriety test, the officer should note in his/her report that the instrument detected a presence of alcohol above/below .08 BAC. Do not list the observed value of the instrument in the narrative.

C. Blood Test

1. These tests will be performed at the hospital by the emergency room staff or other designated facility. These tests are more specific because you can have the sample tested for narcotics as well as alcohol. Since RSMO 577.010 DWI includes Driving under the Influence of a Controlled Substance or Drug, no separate charge is required.
2. These tests should be requested when an officer is presented with an obviously impaired person and little or no breath BAC is detected. Since Missouri state law provides for requesting two separate tests, you may request a blood test to check for the presence of narcotics.

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3. Prior to blood being drawn, the suspect will be advised of his/her Implied Consent warnings, unless unconscious. Unconscious persons have not forfeited their right to refuse a blood draw. Blood draws of an unconscious person must be done under the authority of a search warrant.

4. When having blood drawn at the hospital, officers will use the supplied Missouri State Highway Blood Draw Kit and follow the supplied instructions. Officers should have two tubes of blood drawn at the time of the procedure.

- a) Complete "Laboratory Analysis Request" form from the MSHP to be included with blood sample
- b) Check test tubes for expiration date.
- c) Turn test tubes upside down at least ten (10) times.
- d) Seize the preparation pad and gloves used by the medical personnel drawing blood.
- e) Obtain the name and title of the person drawing the blood for the police report and chain of custody of evidence.
- f) The supplied Blood Draw Kit will be sealed and placed in the evidence refrigerator in the Evidence Processing area of this Command. Notification will be made to the Detective Bureau by email and voicemail about the evidence in the refrigerator.
- g.) A St. Louis County Evidence receipt form must be completed for the chain of custody of the blood samples.

5. The hospital may conduct a "rapid screen" to determine alcohol or drug content of the suspect's blood, this is for medical purposes only. This test is not sufficient to obtain a DWI conviction. The blood samples seized from the suspect must be taken to Missouri State Highway Patrol Crime Lab/Service Center (or other approved facility) for analysis. Testing blood drawn from a suspect for either alcohol or narcotics (illegal and/or prescription) will be conducted by the Missouri State Highway Patrol Lab. If the suspect admits to taking a specific medication/drug, note this on the evidence receipt. **A St. Louis County Evidence Chain of Custody Report Form must be completed to show chain of custody.**

V. REQUIRED FORMS

A. DOR Form #2389 – Alcohol Influence Report (fillable PDF on PD server)

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Note: When filling out the AIR, use the same clock for all times on all forms.

Every alcohol related traffic offense must have an AIR completed. Pay close attention to the Miranda warnings and Implied Consent warnings. The interview of the suspect should be completed by the arresting officer unless extenuating circumstances apply. (i.e. resisting arrest, etc.) Do not read Miranda warnings until after the completion/refusal of the breath/blood test. Only the fillable PDF version of the AIR dated 08/2018 or newer will be used. If during completion of Implied Consent warnings and request of a breath/blood test, the suspect requests an attorney, he/she should be given 20 minutes to contact an attorney of their choice. A telephone book should be made available if requested. The suspect shall be placed in the secure private attorney visitation room of the booking area with access to a telephone. At the conclusion of the 20-minute period, he/she will be returned to the booking area and re-read Implied Consent warnings for a decision of the test.

B. DOR Form #4323 – Notice of Revocation/15 Day Driving Permit for Refusal to Submit to a Chemical Test

1. This form is completed when the suspect refuses one or both requested chemical tests. Since Missouri state law provides that two (2) tests may be requested, a refusal of one is considered a refusal for all. This does not apply to the refusal to submit to field sobriety tests.
2. If a suspect's Missouri state driver's license is suspended, revoked, or denied or the suspect is licensed to drive in another state, DO NOT issue them a temporary driving permit. Simply mark out the temporary driving permit section and write in the status of their driver's license or issuing state. If available, seize the Missouri driver's license. Do not seize out of state driver's licenses. Complete the remainder of the form as required.

C. DOR Form #2385 – Notice of Suspension/15 Day Driving Permit

1. This form should be completed when the suspect has a valid Missouri driver's license and the results of the chemical test are .08 BAC or greater.
2. The officer will give the suspect a copy of the form, seize the suspect's Missouri driver's license and attach it to the report.
3. If a suspect's Missouri state driver's license is suspended, revoked, or denied or the suspect is licensed to drive in another state, DO NOT issue them a temporary driving permit. Simply mark out the temporary driving permit section and write in the status of their driver's license or issuing state. If available, seize the Missouri driver's license. Do not seize out of state driver's licenses. Complete the remainder of the form as required.

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4. This form is not used for suspect narcotic impaired motorists. There is no illegal per se level of narcotics in the blood. This form is for suspects who take the offered test and a reading of .08 BAC or greater is received.

D. Department Form #OPD – F1026 City of Olivette Recoupment of Funds Form

The City is allowed to recoup expenses incurred due to the arrest, prosecution, and incarceration of alcohol related traffic offenses. Officers will complete the form (Omniform) with suspect's information, hours worked, and assisting officer's names. The supervising officer will complete the form with officer's rate of pay and testing costs and forward it to the Municipal Court.

E. MSHP Laboratory Analysis Request Form

Officers shall complete a Missouri State Highway Patrol Analysis Request Form that will accompany the blood sample. This form is used by the Missouri Highway Patrol as its official form. This form does not show chain of custody of the sample, so a **St. Louis County Evidence Chain of Custody Report Form must be completed to show chain of custody.**

VI. DWI ARREST PROCEDURES

A. Arrests

1. All arrests will be based on probable cause. It is not necessary that the officer witness the suspect driving if there are witnesses or other evidence to prove that the suspect was driving.
2. If an officer suspects a driver of DWI, the officer should administer SFST's at the scene unless otherwise directed by the shift commander. If the officer is not SFST qualified, s/he should request assistance from a qualified officer, unless otherwise directed by the shift commander.
3. If the impaired 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 related charges. Do not issue summonses.
4. The suspect may be charged with Municipal and/or State charges (i.e. DWI in Municipal court and guns, drugs, etc. in State 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. Do not issue summonses if warrant application will be made.
5. An arrestee that is injured or extremely intoxicated should be taken to the hospital for examination prior to booking. The name of the examining physician

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and a diagnosis will be included in the report. A fit-for-confinement form from the hospital will be attached to the report.

6. Officers may request (time and manpower permitting) the assistance of a Drug Recognition Expert (DRE) to assist in evaluation of an impaired motorist to further the enforcement of driving while intoxicated and/ or under the influence of drugs.

B. Video Recording

1. If the arrestee was involved in a fatal or potentially fatal crash (Required by Missouri State Law) or if the officer or supervisor otherwise believes it necessary, a video recording will be made to document:

- a. SFST's;
- b. Miranda Rights warning;
- c. Interview session;
- d. Missouri Implied Consent warning; and
- e. Breath test.

2. The video recording will be properly packaged and submitted to Evidence.

C. City of Olivette Ordinance Violations

1. Arrest suspect for DWI.

2. Check DOR records for prior alcohol related traffic arrests. If a suspect has one prior DWI/Excess BAC arrest, he/she will be charged with DWI-Prior through Olivette Municipal Court and the following procedure applies. If two or more prior arrests, he/she must be charged through Missouri state court.

3. Request chemical test of breath

A. Suspect refuses to take test

(1) Book suspect and issue summons for DWI – Section 342.020 in Mobile Ticketing. If the suspect has one prior arrest, issue summons for DWI-prior – Section 342.020 in Mobile Ticketing. Check the DWI/BAC box on summons and type in “REF” in Test Results box. On manually completed summons, check the DWI/BAC box and write “Refusal” on summons

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(2) Book suspect for original traffic charge(s) and issue applicable summonses. Check DWI/BAC box on each summons issued.

(3) Issue notice of Revocation/15 Day Driving Permit for Refusal to Submit to Chemical Test – DOR Form #4323, if applicable

(4) Seize and attach suspect's Missouri driver's license, if available. DO NOT SEIZE OUT OF STATE DRIVERS' LICENSES.

(5) Complete Recoupment of Funds Form #OPD – 1026 except hourly wage portion.

(6) Release suspect as circumstances require.

B. Suspect takes test – Test results are .08 BAC or greater

(1) Book suspect and issue summons for DWI – Section 342.020 in Mobile Ticketing. If the suspect has one prior arrest, issue summons for DWI-prior – Section 342.020 in Mobile Ticketing. Check the DWI/BAC box on summons and type numerical test value in Test Results box. On manually completed summons, check the DWI/BAC box and write numerical test value on summons.

(2) Book suspect for original traffic charge(s) and issue applicable summonses. Check DWI/BAC box on each summons issued.

(3) Issue notice of Suspension/15 Day Driving Permit – DOR Form #2385, if applicable.

(4) Seize and attach suspect's Missouri driver's license, if available. DO NOT SEIZE OUT OF STATE DRIVERS' LICENSES.

(5) Complete Recoupment of Funds Form #OPD – 1026 except hourly wage portion.

(6) Release suspect as circumstances require.

C. Suspect takes test – Test results less than .08 BAC

(1) Suspect may be charged with DWI – Section 342.020 if additional evidence supports charge.

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(2) If the suspect is obviously impaired and the result of the test is little or no breath BAC, a blood test needs to be requested.

D. Suspect takes test – Results less than .08 BAC and suspect is under 21 years of age

(1) Suspect should be charged through Missouri state court under Zero Tolerance law. See Section III, B, 5

D. Missouri State Law Violations

1. Arrest suspect for DWI.

2. Check DOR records for prior alcohol related traffic arrests. If the suspect has two or more prior DWI/Excess BAC arrest(s), he/she must be charged through Missouri state court.

3. Request chemical test of breath

A. Suspect refuses to take test

(1) For felony DWI charges, search warrant application shall be made with the St. Louis County Prosecuting Attorney's office for the retrieval of the suspect's blood sample.

(2) Book suspect for DWI traffic charge under RSMO 577.010 (persistent, aggravated, chronic, or habitual) and issue applicable municipal traffic summonses. Check DWI/BAC box on each summons issued and type REF in the Test Results box.

(3) Issue notice of Revocation/15 Day Driving Permit for Refusal to Submit to Chemical Test – DOR Form #4323, if applicable.

(4) Seize and attach suspect's Missouri driver's license, if available. DO NOT SEIZE OUT OF STATE DRIVERS' LICENSES.

(5) Release suspect P.A.W. (pending application of warrant) as circumstances require.

(6) Warrant application is made with the St. Louis County Prosecuting Attorney's office for the DWI charge. All other applicable traffic charges are referred to the Olivette Municipal Court.

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B. Suspect takes test – Test results are .08 BAC or greater

- (1) Book suspect for DWI traffic charge under RSMO 577.010 (persistent, aggravated, chronic, or habitual) and issue applicable municipal traffic summonses. Check DWI/BAC box on each summons issued and type numerical test value in Test Results box.
- (2) Issue notice of Suspension/15 Day Driving Permit – DOR Form #2385, if applicable.
- (3) Seize and attach suspect's Missouri driver's license, if available. **DO NOT SEIZE OUT OF STATE DRIVERS' LICENSES.**
- (4) Release suspect P.A.W. (pending application of warrant) as circumstances require.
- (5) Warrant application is made with the St. Louis County Prosecuting Attorney's office for the DWI charge. All other applicable traffic charges are referred to the Olivette Municipal Court.

C. Suspect takes test – Test results less than .08 BAC

- (1) Suspect may be charged with DWI – RSMO 577.010 if additional evidence supports charge
- (2) Missouri state law only requires that suspect shows enough clues of impairment by use of the SFST's. A breath alcohol reading of .08 is not a requirement for DWI.

E. Juveniles

1. Under 15 years of age – Complete Alcohol Influence Report and CARE report. Refer to St. Louis County Family Court
2. 15 to Under 18 years of age – Process as an “adult”.

VII. SOBRIETY CHECKPOINTS

Sobriety checkpoints will be conducted within the guideline of the Missouri Department of Transportation, Traffic and Highway Safety Division and the following procedures:

1. Sobriety checkpoints will be conducted only upon order of the Chief of Police.

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2. Selection of the site and time of sobriety checkpoints will be based upon DWI statistical information and will take into consideration safety factors such as traffic flow and visibility.
3. Staffing of checkpoints will be done in a manner so as not to interfere with the normal operations of the Department.
4. Sobriety checkpoint procedures
 - a. Public notice, including press releases, will be given a minimum of seventy-two (72) hours prior to the initiation of a checkpoint. The actual location of the checkpoint will not be included in the public notice.
 - b. In order to ensure the safety of the public and the officers assigned to the checkpoint, as well as to minimize inconvenience to motorists, each checkpoint will be staffed by a minimum of five (5) uniformed officers each assigned specific duties.
5. The checkpoint supervisor shall be trained by the Missouri Department of Transportation, Traffic and Highway Safety Division and/or the Missouri Safety Center in Sobriety Checkpoint legal, technical and logistical issues. The checkpoint supervisor will:
 - a. Develop a written plan for each checkpoint;
 - b. Conduct a briefing prior to the checkpoint during which he/she will:
 - (1) Outline the overall checkpoint plan to the officers assigned;
 - (2) Stress the need for safety;
 - (3) Ensure that all officers assigned are aware of the goals and procedures;
 - (4) Make personnel assignments;
 - (5) Review the standard motorist greeting that will be used by officers assigned.
 - c. Take charge of the overall supervision of the checkpoint and the officers assigned;
 - d. Complete a summary report of the checkpoint results as well as any other reports which may be required by the Missouri Division of Highway Safety.

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6. Officers assigned to the sobriety checkpoint will:
 - a. Contact each driver in a polite and courteous manner and as briefly as possible:
 - (1) Identify him/herself and explain the checkpoint;
 - (2) Ask the driver for his/her license and proof of insurance;
 - (3) Carefully check each driver for signs of intoxication and, if alcohol/drug influence is suspected, remove the driver from the vehicle to the area designated for field sobriety testing;
 - (4) The suspect vehicle will be moved from the checkpoint lane.
 - b. Administer full battery of tests, to include SFST's, alphabet, counting, and PBT to those drivers suspected of being under the influence of alcohol or drugs.
 - c. If the driver satisfactorily performs the SFST's he/she will be allowed to proceed.
 - d. If the results of the SFST's lead the officer to believe the driver is impaired, s/he will be taken into custody to submit to a chemical test.
 - e. Promptly prepare an AIR and any related forms or permits.
 - f. Follow booking procedures established for the checkpoint.

This General Order supersedes all prior directives and orders inconsistent therewith.

BY ORDER OF:

Signature on File

Beth M. Andreski

Chief of Police

Effective Date: 6/16/2010

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