



Peace & Justice Commission

ACTION CALENDAR
February 19, 2013

To: Honorable Mayor and Members of the City Council
From: Peace and Justice Commission
Submitted by: George Lippman, Chairperson, Peace and Justice Commission
Subject: Driving Under the Influence (DUI) Policy Recommendations

RECOMMENDATION

Instruct the Mental Health, Community Health, Transportation, and Police Review Commissions to research and submit recommendations to the Peace and Justice Commission's DUI Subcommittee within six (6) months of referral. Research and recommendations should focus on improvements to Harm Reduction and Minimization policies with respect to DUI in Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

Minimal.

CURRENT SITUATION AND ITS EFFECTS

At its regular meeting on December 3, 2012, the Peace and Justice Commission unanimously adopted the following recommendation:

Request that the City Council instruct the Mental Health Commission, Community Health Commission, Transportation Commission, and Police Review Commission, to research and submit recommendations to the Peace and Justice Commission's DUI Subcommittee within six (6) months of referral. Research and recommendations should focus on improvements to Harm Reduction and Minimization policies with respect to DUI in Berkeley.

M/S/C: (Sochet/Bohn)

Ayes: Bohn, Haney, Jailer Shannon, Kenin, Lippman, Maran, Nicely, Sochet

Noes: None

Abstain: None

Absent: El-Qoulaq (unexcused); Meola (excused); Siegel (unexcused)

On September 27, 2011, Council reviewed a proposal for a new approach to DUI cost-recovery and disincentive in Berkeley and referred the proposal to the Peace and Justice Commission for further research and review.

The scope of the problem of DUI in Berkeley is significant. In 2010, Alameda County experienced 24 fatal and 585 injury accidents involving alcoholⁱ. In FY2011 (7/1/10 through 6/30/11) there were 254 DUI arrests by the Berkeley Police Department (BPD). The City Council and residents of Berkeley have a pressing interest in reducing DUI in order to protect residents from harm.

While DUI expenses incurred by offenders can be greaterⁱⁱ, BPD reports that it receives 81% of the \$315 base fine resulting from these arrests if the courts collect the fine. Not all DUI arrests result in fine collectionⁱⁱⁱ.

Given the public interest in reducing DUI while also reducing the financial burden that DUI enforcement places on the City, a proposal^{iv} for new fines on DUI offenders was forwarded to the Peace and Justice Commission for review. The proposed restructuring of fines for DUI offenders is modeled after a similar policy in Oakley, CA, and would require "those convicted of a DUI [to] pay for all city expenses due to their DUI crime". Upon review of the Oakley policy, The Peace and Justice Commission wishes to express concern regarding the efficacy and the fairness of such a policy. Additionally, we present a recommendation for further research and policy-building.

DUI arrests are subject to the same racial disparities that exist throughout the criminal justice system. The University of Texas School of Public Health conducted a study in 2004, which found that self-reported rates of DUI were highest among white men (22%), but the same group's arrest rate for DUI was lowest among men, at 0.9%^v, indicating that white men *perform the majority of DUI* among men, but experience *the fewest arrests*^{vi}. In 1997, the California Criminal Justice Statistics Center found that the percentage of DUI arrests involving whites dropped, while the percentage of Hispanics and blacks both rose^{vii}^{viii}.

This imbalance continues once suspects find themselves in court. The NHTSA reports that in 1995 in Riverside County, 9,190 arrests were made for DUI but 5,870 were ultimately convicted. Of the 3,320 that were not convicted, 96% were working with a private attorney, not a public defender or Pro Se^{ix}. Experienced defense teams are much more likely to result in a reduced sentence, which would invalidate the pay requirements in the Oakley law, effectively causing the law to target only offenders who are least able to pay the fines.

In addition to the inequities of DUI arrest and prosecution, the Oakley model reports very little success this far. Oakley Finance Director Paul Abelson notes that none of the offenders that have been billed under the new program have remitted payment of their fines^x.

Given the real danger to public safety posed by DUI, new strategies to address unsafe alcohol and drug behavior are called for. Harm Reduction^{xi} or Harm Minimization^{xii}, a range of public health policies designed to reduce the harmful consequences associated with risky human behaviors, offer alternatives to abstinence-only drug and alcohol education and effective strategies to reduce the community impact of DUI.

Given the potentially unfair and ineffectual outcomes of the Oakley model, and the importance of reducing DUI in Berkeley, we recommend that the City Council instruct relevant commissions to research and assess Harm Reduction and Minimization policies in other jurisdictions, and provide recommendations to revise and supplement current Berkeley policy.

The Peace and Justice Commission, Mental Health Commission, Community Health Commission, Transportation Commission and Police Review Commission, as well as City staff in the department of Health, Housing and Community Services and others as appropriate, are each uniquely suited to provide research and analysis from relevant points of view on this important topic. This analysis will support your Peace and Justice Commissioners in creating a legislative proposal.

The Peace and Justice Commission appreciates the referral from Council and the opportunity to contribute a social-justice approach to this important issue of public safety and health.

RATIONALE FOR RECOMMENDATION

The Peace and Justice Commission, consistent with its mandate to promote peace and justice, locally, nationally and internationally, recommends that the Council seek the input of involved City Commissions in the collaborative development of a city-wide policy related to DUI.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager affirms the policy of the City that each Commission has independent jurisdiction over its work plan. Commissions may provide information for consideration by other Commissions and we encourage this type of information sharing on issues of overlapping interest.

CONTACT PERSON

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ⁱ "Statewide Integrated Traffic Records System (SWITRS)." *CHP- 2010*. N.p., n.d. Web. 17 Nov. 2012. <<http://www.chp.ca.gov/switrs/>>.

ⁱⁱ "California's Avoid DUI Enforcement Campaign." *City of Berkeley*. N.p., n.d. Web. 17 Nov. 2012. <<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=32798>>.

ⁱⁱⁱ Brenman, Eric. "DUI DATA." Message to Noah Sochet. 17 Nov. 2011. E-mail.

^{iv} Worthington, Kriss. *City Manager Referral: Consideration of Implementation of New DUI Policies*. Berkeley: n.p., 27 Sept. 2011. PDF.

^v Caetano, Raul, and Christine McGrath. "Driving under the influence (DUI) among U.S. ethnic groups." Science Direct. University of Texas, School of Public Health, Dallas Regional Campus, 2004. Web. 21 Jun 2012. <<http://www.sciencedirect.com/science/article/pii/S0001457504000739>>.

^{vi} This study also found that self-reported DUI behavior in whites increased slightly between 1994 and 2004, while it remained steady among Hispanic and black respondents.

^{vii} State of California Office of the Attorney General. "Report on Arrests for Driving Under the Influence in California, 1997." 1999. Print.

^{viii} While some population shifts have occurred in that timeframe, they do not account for this disparity.

^{ix} Jones, Ralph K., Connie H. Wiliszowski, and John H. Lacey. "Examination of DWI Conviction Rate Procedures." *National Highway Traffic Safety Administration*. N.p., Aug. 1999. Web. 17 Nov. 2012. <<http://www.nhtsa.gov/people/injury/research/dwiconviction/dwiconvictions.htm>>

^x "City Council considers proposal that could raise cost of drunk driving." *The Daily Californian*. N.p., n.d. Web. 4 Jun 2012. <<http://www.dailycal.org/2011/09/28/city-council-considers-proposal-that-could-raise-cost-of-drunk-driving/>>.

^{xi} Duncan, David F., Thomas Nicholson, Patrick Clifford, Wesley Hawkins, and Rick Petosa. "Harm Reduction: An Emerging New Paradigm for Drug Education." *Journal of Drug Education* 24.4 (1994): 281-90. Print.

^{xii} Poulin, Christiane, and Jocelyn Nicholson. "Should Harm Minimization as an Approach to Adolescent Substance Use Be Embraced by Junior and Senior High Schools?" *International Journal of Drug Policy* 16.6 (2005): 403-14. Print.