

## APPENDIX A [Article 4]

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### PURPOSE

- 1.0 To establish a policy to deal with employee drug/alcohol abuse.
- 1.1 To provide guidelines for dealing with employees whose job performance may be affected by drug/alcohol use.
- 1.2 To establish conditions under which employees may be subject to drug/alcohol testing.
- 1.3 To establish procedures for conducting drug/alcohol testing.
- 1.4 To establish training and education programs for employees on drug/alcohol abuse topics.
- 1.5 To establish procedures which encourage employees to seek treatment for drug/alcohol abuse problems.

### DEFINITIONS

- 2.0 *CERTIFIED LABORATORY* A laboratory which has been certified by the State of Maryland and by the U.S. Department of Health and Human Services to perform job-related forensic testing for drugs and alcohol.
- 2.1 *DRUG/ALCOHOL ABUSE* - The use of illegal drugs, or the misuse of drugs or alcohol.
- 2.2 *DRUG/ALCOHOL TEST* A procedure to determine if a blood, breath, or urine specimen contains drugs, alcohol, or the metabolites of drugs or alcohol.
- 2.3 *EMPLOYEE ASSISTANCE PROGRAM (EAP)* - A program which offers confidential counseling services to employees, and referral to other resources for treatment. Employees do not pay any fee for the services of EAP counselors. Employees may obtain EAP services on their own or be referred to the EAP by their supervisors or by Occupational Medical Section staff.
- 2.4 *EMPLOYEE MEDICAL EXAMINER* - A qualified physician designated by the Occupational Medical Section (OMS) who shall act as the Medical Review Officer.
- 2.5 *ILLEGAL DRUGS* - Substances which are illegal to possess without a prescription under local, state, or federal law. Section 4.0 L of this procedure lists illegal drugs for which applicants and employees will be tested. Employees may also be tested for illegal substances not listed in Section 4.0 L if information available to the Department or the Occupational Medical Section indicates that this is necessary.

- 2.6 *REASONABLE SUSPICION* - The evidentiary standard which must be met before a "for cause" drug/alcohol test is required of an employee. In order to meet this standard, the police chief or designee must determine, based on specific objective facts and reasonable inferences drawn from those facts, that there is a reasonable basis to suspect that a test would show that the employee has drugs/alcohol in his body.
- 2.7 *COUNTY PROPERTY* - For the purposes of this procedure, County property means the Executive and County Office Buildings and all police facilities.

## POLICY

- 3.0 Employees must not have illegal drugs in their bodies while at work. Employees must not take illegal drugs or abuse prescription drugs while on duty, on County property, or in a County vehicle.
- 3.1 Employees must not consume alcohol while at work or on duty. Employees must not be impaired by, or under the influence of, alcohol while at work, on County property, or on duty. For the purpose of this procedure, impairment shall be indicated by a blood alcohol concentration of .05%, and under the influence shall be indicated by a blood alcohol concentration of .10%. Employees who are required to maintain a commercial driver's license as a condition of employment must meet the standards for alcohol stated in § 3.2.
- 3.2 Any employee who is required to maintain a commercial driver's license as a condition of County employment must not, while operating a vehicle, have alcohol in the body beyond the established cutoff level in a test for the presence of alcohol. The established cutoff level is .02%.
- 3.3 Employees will not operate County vehicles or heavy or dangerous equipment with illegal drugs in their bodies or while impaired by, or under the influence of, alcohol. Employees must not operate privately-owned vehicles with illegal drugs in their bodies or while impaired by, or under the influence of, alcohol, if such operation occurs during the employees' work hours or shift.
- 3.4 Employees who are required to drive County vehicles or operate heavy or dangerous equipment must not consume alcoholic beverages during their lunch or other breaks, or within four hours of the start of their work day or shift.
- 3.5 Employees must not consume alcohol or have open containers of alcohol in County vehicles, or in any private vehicle which is being used by an employee during the employee's work hours or shift.
- 3.6 Employees must not possess, manufacture, sell, offer for sale, give or purchase illegal drugs while on duty, on County property, or in a County vehicle.
- 3.7 Employees must not take, for their own use or for sale, drugs prescribed for other persons with whom they come in contact in the course of the performance of the duties of their positions.
- 3.8 Employees must not take, for their own use or for sale, drugs or alcohol for which they are responsible as part of their duties.

- 3.9 An employee must not obtain alcohol or drugs by promises of favors or threats based on the authority of the employee's position with the County.
- 3.10 Employees must not adulterate, tamper with, or substitute a different urine specimen for a drug/alcohol test.
- 3.11 Law enforcement officers may transport alcohol or illegal drugs in official or private vehicles, and consume, possess, offer for sale, sell, give or purchase illegal drugs or alcohol, provided that such actions are taken in accordance with applicable laws and regulations to further law enforcement objectives.
- 3.12 Employees are encouraged to obtain treatment for drug/alcohol abuse and to use the counseling and referral services offered by the Office of Stress Management of the Department of Police.
- 3.13 Employees who seek treatment for drug/alcohol abuse may be allowed to use their accrued sick and annual leave, compensatory time, or leave without pay to obtain treatment.
- 3.14 Employees who obtain treatment for drug/alcohol abuse on their own initiative will not be subject to disciplinary action, absent evidence that they have violated this procedure, federal, state, or local law, or County or Departmental regulations.
- 3.15 Employees must report to their supervisors when they have taken, or intend to take, any drug which they may reasonably expect to affect their performance. Employees should ask their physicians about how prescription drugs may affect their performance, and read any warnings printed on prescription drugs. Employees are encouraged to read warnings printed on non-prescription drugs. The supervisor should consult the OMS or other resources regarding potential effects and recommendations concerning driving restrictions.
- 3.16 Employees who are convicted of a drug/alcohol related offense which occurred in the workplace, on County property, while on duty, or while operating a County vehicle or equipment must report such conviction to their supervisors within five calendar days. Conviction includes probation before judgment, a plea of *nolo contendere*, or any imposition of a sentence for being under the influence of, or for having manufactured, distributed, dispensed, used, or possessed any controlled substance, including alcohol.
- 3.17 [Reserved.]
- 3.18 [Reserved.]
- 3.19 Employees who are required to maintain a commercial driver's license as a condition of employment and who are charged with or convicted of a drug/alcohol related offense must report any such charge or conviction to their supervisors within five calendar days. Conviction includes probation before judgment, a plea of *nolo contendere*, or any imposition of a sentence for being under the influence of, or for having manufactured, distributed, dispensed, used, or possessed any controlled substance, including alcohol.

- 3.20 Subject to the evidentiary standards contained in this procedure, employees who are suspected of violating this policy may be required to submit to drug/alcohol to
- 3.21 Employees who violate this policy may be required to submit to periodic drug/alcohol testing as a condition of keeping their positions, or in lieu of disciplinary action.
- 3.22 Employees who violate this policy may be subject to disciplinary action up to, and including, termination or dismissal. Disciplinary actions will be taken in accordance with applicable laws and regulations, including the Personnel Regulations, collective bargaining agreements, and the Law Enforcement Officers' Bill of Rights.

## GENERAL

### 4.0 *DRUG/ALCOHOL TESTING*

#### A. For Cause Testing

1. The police chief or designee may direct an employee to submit to drug/alcohol testing if, after reviewing the information presented by the employee's supervisor, the chief has reason to believe or suspect that a test would confirm that an employee has drugs/alcohol in his or her body. The police chief or designee may delegate this responsibility to individuals in the Department who have received training as required by this procedure. Whenever possible, two supervisors at the work site should observe the employee, or review the information about the employee, prior to pre this information to the police chief or designee.
2. Prior to requiring that an employee be tested the police chief must have "reasonable suspicion," which is defined as objective facts which, when taken with the reasonable inferences drawn from those facts, provide a reasonable basis to suspect that a test would show the presence of drugs/alcohol in the employee's body.
3. Employees must be placed in an appropriate leave status or assigned appropriate light duties until the results of the test are known. If the results of the drug test are negative, any sick leave, annual leave, or compensatory time which the employee used will be restored. An employee placed on leave without pay will be reimbursed for lost wages and benefits if the test is negative.
4. A blood sample and urine sample will be obtained from the employee to be tested.

- B. Random Testing - Police officers assigned to specialized units, the primary purpose of which is the investigation of drug-related offenses, will be subject to random urine tests to detect the use of drugs.

C. Follow-up Testing - Employees may be subject to periodic drug/alcohol urine tests for a period of not less than 12 months and no greater than 60 months (usually the time for periodic urine tests for alcohol abuse alone shall not exceed 18 months) under the following conditions:

1. The employee refused to be tested, has a confirmed positive drug/alcohol test result, or the employee's drug/alcohol abuse has been confirmed either by the employee's admission of such abuse, or other objective evidence of such abuse; and
2. The Department has determined that the employee will be subject to disciplinary action or will not be allowed to resume the full range of the duties of his position unless the employee has completed the treatment recommended for the drug/alcohol abuse and has demonstrated through periodic drug/ alcohol testing over a specified period that the treatment was successful.

D. Test Forms/Information - An employee who is tested for drugs/alcohol will be furnished with pre-printed information sheets which describe the test and the use of test results. Employees will be given a carbon copy or photocopy of each completed form. Because laboratories will not perform drug/alcohol tests unless the employee completes and signs the required forms, a refusal by an employee to complete and sign the required forms will be considered a refusal to submit to testing.

E. Collection of Specimens - Specimens for drug/alcohol testing will be taken under controlled circumstances which reduce the opportunity to tamper with the specimen or substitute a different specimen, with reasonable accommodations to privacy. The Occupational Medical Section or other collection site authorized by OMS will ensure that specimen collection is conducted in accordance with the procedures established by the U.S. Department of Health and Human Services, and that the specimen is properly identified, protected from contamination or tampering, and that the chain of custody is protected and recorded.

F. Requirements for Laboratories Which Conduct Forensic Testing for Drugs/Alcohol  
Tests will *be* conducted only by laboratories certified by the State of Maryland and by the U.S. Department of Health and Human Services to perform job-related forensic testing for drugs/alcohol.

G. Substances Tested

1. A urine specimen obtained for drug/alcohol testing will be subject to an immunoassay screen for the following substances:

Amphetamines	Barbiturates	Methaqualone (Quaalude)
Benzodiazepines		Methadone
Cannabinoids (Marijuana)		Opiates
Cocaine		Phencyclidine (PCP)
Ethanol (Ethyl Alcohol)		Propoxyphene (Darvon)

2. If the immunoassay screen for the substances listed in § 4.0(G.1) is positive, a confirmation test using gas chromatography/mass spectrometry (GC/MS) will be conducted. The presence of ethyl alcohol will be confirmed by either gas chromatography/mass spectrometry (GC/MS) or gas chromatography (OC).
3. If information available to the Department or Occupational Medical Section indicates that it is necessary, a specimen may be tested for any controlled dangerous substance included on the schedules contained in Maryland Annotated Code Article 27, § 279.
4. Specimens may also be tested to determine if they have been diluted or adulterated.
5. Blood specimens will be tested by gas chromatography (GC) to determine the blood alcohol concentration.

#### H. Drug/Alcohol Test Results

1. The laboratory will report test results in writing to the Employee Medical Examiner.
2. A positive test result indicates that the presence of a substance was measured, and confirmed, at or above a predetermined cutoff level. If a substance is present at a level below the predetermined cutoff, the test result will be reported as negative. The cutoff levels are those established for the substances by the National Institute on Drug Abuse (NIDA) or by the test manufacturer.
3. Positive drug/alcohol test results will be reviewed by the Employee Medical Examiner along with the employee's medical history, and other relevant information. An employee may be asked to submit documentation from the treating physician if the Employee Medical Examiner believes that the test results may have been influenced by prescription drugs or other medications or treatments.
4. If the Employee Medical Examiner determines that there is a legitimate medical explanation for a positive test result and no evidence of drug/alcohol abuse, the test result will be reported to the Department as negative.
5. A positive test result will be reported as confirmed only after the Employee Medical Examiner has reviewed the medical history and other information offered by the employee and has concluded that the test results were due to the use of drugs or alcohol in violation of this procedure.
6. The Occupational Medical Section will report whether test results were negative or confirmed positive to the police chief or designee and to the employee. The results will be discussed with the employee first unless the Occupational Medical Section is unable to reach the employee.
7. For "for cause" testing, the blood alcohol concentration will also be reported.

8. For follow-up testing or for any type of testing for employees who must maintain a commercial driver's license as a condition of employment, test results will be reported as confirmed positive for alcohol if the urine alcohol concentration is above .02%, the established cutoff level for the test.
  9. An employee who has a confirmed positive test result will be given a copy of the laboratory report, either in person or by certified mail at the address given by the employee on Form #1, *Authorization to Obtain Specimen for Drug/Alcohol Testing*. This must be done by the Occupational Medical Section within 30 calendar days of the date on which the specimen was collected.
  10. If an employee who has a confirmed positive test result elects to have an independent confirmation test conducted and the result of the independent confirmation test is negative, the test result will be considered negative, and reported as negative, and the employee will be reimbursed for the cost of the test.
  11. Drug/alcohol test results will be maintained by the Occupational Medical Section as part of employee medical records. They will be treated as confidential medical information and will be disclosed only to the following individuals:
    - a. Those who have a bona fide need to know in order to make an administrative decision on the basis of the information, which may include the police chief, the employee's supervisor, and appropriate individuals in the Personnel Office or County Attorney's Office.
    - b. The labor organization or other representative of the employee, if the employee provides written authorization for such release.
    - c. Those to whom release is required by law or authorized by the employee.
  12. Any specimen which tests positive for drugs/alcohol will be preserved frozen by the laboratory for a period of one year, or until all actions or appeals resulting from the positive test result are exhausted.
- I. Repeat Tests - If the Employee Medical Examiner determines that the results of the test may have been affected by prescription drugs or other substances to which the employee was exposed, the employee may be asked to submit a second specimen, and the results of the first test will be disregarded. A retest may also be required where the first specimen was lost, contaminated, or taken under questionable circumstances. An employee who is directed to undergo a repeat test will be given a written statement by the Occupational Medical Section setting forth the reason(s) for the repeat test.
- J. Refusal to Take Drug/Alcohol Test
1. Law enforcement officers who refuse to be tested are subject to the provisions of the Law Enforcement Officers' Bill of Rights.
  2. An employee who refuses to be tested may be placed in an appropriate leave status or assigned appropriate light duties until the Department has determined that the employee's performance will not be affected by drug/alcohol abuse.

3. The police chief may refer an employee who refuses to be tested to the Occupational Medical Section for a fitness-for-duty examination.

#### K. Consequences of Positive Drug/Alcohol Test Results

1. For an employee, a confirmed positive test result for illegal drugs is a violation of this policy.
2. For an employee who must maintain a commercial driver's license as a condition of County employment and for an employee subject to follow-up testing, a confirmed positive test result for alcohol is a violation of this procedure. For other employees, a confirmed positive test result and a blood alcohol concentration which indicates that the employee was impaired (.05%) or under the influence (.10%) is a violation of this procedure.

#### 4.1 *ADVERSE ACTIONS FOR VIOLATION OF THIS PROCEDURE*

- A. Probationary employees without merit system status who violate this policy may be subject to termination.
- B. An employee who violates this policy may be subject to termination for failure to meet the medical requirements of his/her position. Prior to making a decision or taking an action based on the medical findings, the chief administrative officer or designee must determine if the problem is correctable and if reasonable accommodation could be made in accordance with the County's policy on the employment of the handicapped or disabled.
- C. An employee with merit system status who violates this policy will be subject to appropriate disciplinary action, up to and including dismissal. In determining what disciplinary action is appropriate, the Department must take into consideration the following factors:
  1. The nature and seriousness of the violation, including the actual harm caused and the potential harm that could have been caused by the violation.
  2. The employee's position and the relationship of the violation to the employee's duties and responsibilities.
  3. Whether other laws, regulations and policies, including Departmental regulations were violated.
  4. The employee's work record and previous disciplinary actions.
  5. Whether the employee has sought or is willing to seek treatment or rehabilitation.
- D. The police chief may, as an alternative to discipline or in addition to discipline, require the employee to be assessed for a substance abuse problem through the Occupational Medical Section, the EAP, or other resource, to complete any recommended treatment or rehabilitation, to submit documentation of successful completion of the recommended treatment or rehabilitation program, and submit to follow-up drug/alcohol testing.



## 4.2 *EMPLOYEE RIGHTS*

- A. An employee subject to any type of drug/alcohol testing must be advised of the following, prior to the collection of the specimen:
  - 1. The reason(s) for requiring the test;
  - 2. If he/she refuses to be tested, that he/she may be subject to disciplinary action;
  - 3. The name and address of the laboratory that will perform the test;
  - 4. That, if the result of the test is confirmed as positive, he/she is entitled to have a test conducted on the same specimen by a different certified laboratory at his/her own expense.
- B. An employee who has a confirmed positive drug test result must be given the following, either in person or by certified mail, within 30 calendar days of the date on which the specimen for the drug test was taken:
  - 1. A copy of the laboratory report;
  - 2. Notice that he/she is entitled to have a test conducted on the same specimen by a different certified laboratory at his/her own expense;
  - 3. A copy of this policy, and any applicable Departmental regulation or procedure; and
  - 4. If applicable, written notice of the Department's intent to terminate, or take disciplinary action against the employee, or change the conditions of employment.
- C. If the result of the independent confirmation test requested by the employee is negative, the test result will be considered negative, and reported as negative, and the employee will be reimbursed for the cost of the test.
- D. If the Department interviews or questions a bargaining unit employee about his drug or alcohol use or the possible violation of this procedure, the employee must be notified of and accorded the right to representation by the Fraternal Order of Police, if the employee requests such representation. The employee will be given a reasonable period of time to obtain representation but no longer than two hours.
- E. If the employee requests representation, the Department must allow a bargaining unit employee to be represented in any meetings or discussions between the employee and the Department regarding whether the employee will agree to under-go treatment in lieu of discipline or as a condition of retaining his/her position.

- 4.3 *APPEAL RIGHTS* - An employee who is disciplined or whose conditions of employment are changed as a result of refusal to take a drug/alcohol test or for violation of this policy may appeal such actions in accordance with the provisions of the Law Enforcement Officers' Bill of Rights or by filing a grievance under the provisions of this Agreement, as applicable.

#### 4.4 *REMOVING EMPLOYEES FROM THE DUTIES OF THEIR POSITIONS*

- A. When an employee is found to have violated this policy, the department must put the employee in an appropriate leave status or assign the employee appropriate duties until the Department has taken disciplinary action against the employee, or is satisfied that the employee has successfully completed the recommended treatment program, if any.
- B. The Department may also require the employee to submit to follow-up drug/alcohol testing for a period of .not less than 12 months and no greater than 60 months (usually the time for periodic urine tests for alcohol abuse alone shall not exceed 18 months) as a condition to resuming the duties of his/her position. The employee may be required to sign an agreement to successfully complete the recommended treatment program for the drug/alcohol abuse problem, submit documentation of successful completion of the recommended treatment or rehabilitation program, and submit to follow-up testing as a condition to being allowed to resume the duties of his/her position. An employee who fails to comply with the terms of the agreement will be subject to disciplinary action or termination in accordance with the terms of the agreement or appropriate regulations.

#### 4.5 *EMPLOYEES WHO REFER THEMSELVES FOR TREATMENT*

- A. Employees who refer themselves for treatment for drug or alcohol abuse will not be subject to disciplinary action, absent other evidence of violation of this policy, federal, state, or local law, or County or Departmental regulations.
- B. Such employees may be granted leave without pay or allowed to use their accrued leave to obtain treatment. Requests for leave for such purposes will be regarded as confidential and the employee's supervisors will not divulge to others the reason for the employee's absence.
- C. An employee may be granted two hours of administrative leave to confer with EAP staff, with the approval of the supervisor.