

## 15.110 ALCOHOL AND DRUG TESTING OF DEPARTMENT PERSONNEL

### **Reference:**

Administrative Regulation #52 (07/07)

Manual of Rules and Regulations: 1.01, 1.02, 2.26 A/B, 6.01, 6.02 A/B, 6.03, 6.04, 6.05, 11.03

Public Employees Assistance Program (PEAP)

U.S. Department of Justice, Drug Enforcement Administration: Office of Diversion Control (<http://www.deadiversion.usdoj.gov/schedules/>)

### **Definitions:**

**Abuse** - the misuse of.

**Alcohol** - ethyl alcohol or ethanol.

**Drugs** - any substance taken into the body other than alcohol, which may impair one's mental faculties and/or physical performance.

**Substance** - alcohol or drug.

### **Purpose:**

To set uniform guidelines for handling instances where Department personnel are suspected of substance abuse.

To protect the City's interests as well as constitutional rights of individual employees while providing the citizens of the community a safe environment.

Specifically, the policy is designed to:

- Develop a fair and equitable method for administering a random alcohol and drug-testing program.
- Protect the public, coworkers, and the involved employee from alcohol/drug related accidents.
- Prevent losses in time, productivity, and unnecessary expenses that may result from employees performing their duties under the influence of alcohol/drugs.
- Limit the potential for lawsuits against the City as a result of careless or negligent acts by alcohol/drug involved employees.
- Discourage the use of illicit drugs.

### **Policy:**

The Cincinnati Police Department encourages any member who believes they have a substance abuse problem to seek help through the Public Employees Assistance Program (PEAP) or the police psychologist.

Department employees with a substance abuse problem who voluntarily come forward

prior to notification they have been selected for random alcohol and drug testing will not be subject to the disciplinary process. However, other administrative action may be necessary, e.g., detailing the officer to a non-field assignment, suspension of police powers, etc. The officer will be returned to duty after successfully completing an alcohol or drug rehabilitation program. The rehabilitation program may include follow-up alcohol and drug testing.

Incidents involving the use, possession, preparation for sale, or trafficking in illicit, controlled substances will be prosecuted according to state law. The Police Department will not invoke the administrative process (Rule 2.26) in criminal investigations. The investigating supervisor will give the employee the Miranda warning and follow the rules of evidence.

**Procedure:**

A. On-Duty

1. In cases of suspected substance abuse, notify the shift officer in charge (OIC) of the district of occurrence.
2. If the member's unit of assignment is different from the district of occurrence or the incident occurs outside the City limits, notify a supervisor from the member's unit. The suspected member's immediate supervisor will respond and participate in the investigation.
3. The investigating supervisor(s) will conduct a preliminary investigation. At least one supervisor of higher rank than the suspected employee will be involved in the investigation. They will determine if there is reasonable suspicion of substance abuse and to what extent the member is impaired.
  - a. Supervisors will examine bottles, flasks, or other containers they suspect may hold alcohol or drugs.
  - b. A second supervisor must confirm the reasonable suspicion of substance abuse.
4. If the investigating supervisor(s) determines there is reasonable suspicion of substance abuse:
  - a. Remove any firearm from the employee's possession.
  - b. Do not allow a member suspected of substance abuse to operate a motor vehicle.
  - c. Notify the member's district/section/unit commander.
    - 1) If on-duty, the commander will respond and participate in the investigation.
    - 2) If off-duty, the commander may request the on-duty command officer to coordinate the investigation. The district/section/unit commander will respond when there is no on-duty command officer available to participate in the investigation.

- d. Notify the on-duty command officer.
    - 1) The on-duty command officer will respond and, in the absence of the district/section/unit commander, participate in the investigation.
  - e. Contact a member of Internal Investigations Unit (IIU) using the Emergency Communications Section (ECS) recall list.
    - 1) IIU will respond, conduct the investigation and coordinate the drug and/or alcohol testing.
    - 2) Investigating unit supervisor(s) will assist IIU in the testing and investigative process if requested.
5. Testing for substance abuse
- a. During regular business hours, an IIU investigator will transport the member to the testing facility.
    - 1) CONCENTRA Medical Center, located at 4623 Wesley Avenue, Suite C, Cincinnati, Ohio 45212, will administer drug and/or alcohol tests, Monday through Friday, from 0800 hours to 1700 hours.
  - b. Contact CONCENTRA at (859) 486-8757 or (513) 807-8879 to arrange a drug and/or alcohol test after regular business hours. CONCENTRA Medical Center located at 1825 Airport Exchange Blvd., Erlanger, KY has extended hours of operation Monday through Friday, 0700 hours to 2100 hours and Saturdays, 0900 hours to 1500 hours.
    - 1) A CONCENTRA staff member will meet the notifying supervisor and Department member at CONCENTRA Medical Center.
  - c. The medical laboratory will obtain and analyze a urine specimen and send the results to the Employee Health Services (EHS) physician. All records pertaining to the test will remain confidential and restricted. Only authorized personnel will have access to the test results.
    - 1) If the test is positive, the member may select a City approved alternative laboratory and have the sample retested at their own expense.
      - a) The officer will coordinate with IIU to schedule a retest of the sample.
      - b) For chain of custody purposes, the City's medical provider will transfer the specimen directly to the alternative laboratory with appropriate entries made on an Evidence Submission Form.
6. If, upon conclusion of the testing and investigation process, the district/section/unit commander or on-duty command officer concludes a member is impaired due to substance abuse he/she will:
- a. Direct the member to submit a Form 17 stating all pertinent information about the incident.

- b. Relieve the member of duty in accordance with Sections 11.01, 11.02, and 11.03 of the Manual of Rules and Regulations.
7. Duties of the investigating supervisor
    - a. The investigating supervisor will provide transportation home or to a health care facility for a member relieved of duty. Do not permit the member to operate a motor vehicle.
    - b. Make a blotter entry at the member's unit of assignment showing the time the member was relieved of duty.
    - c. Secure the member's badge, wreath, firearm, TASER, body worn camera (BWC), school access card and official identification in the district/section/unit's property room.
    - d. IIU, the investigating supervisor(s), and district/section/unit commander or on-duty command officer will prepare and submit all required reports containing all pertinent information about the incident. Include the determination of reasonable suspicion and the physical/mental condition of the member at the time of the infraction. Distribute copies to the following:
      - 1) Police Chief
      - 2) Member's bureau commander
      - 3) Member's district/section/unit commander
      - 4) Investigating supervisor's unit
      - 5) IIU
  8. Duties of the command officer:
    - a. The on-duty command officer will notify the Police Chief before the member's next tour of duty. The command officer will recommend the return to duty or the suspension of the member. On weekends or holidays the command officer will notify the Administrative Duty Officer and make his recommendations.
    - b. The Police Chief or acting Police Chief will hold a hearing before the member's next tour of duty.
      - 1) IIU will notify the member to attend the hearing.
      - 2) The Police Chief will determine whether to suspend the member pending a disciplinary hearing or return the member to duty.

## B. Off-Duty

1. Substance abuse by an off-duty Department member acting in the capacity of or with the authority as a police officer is subject to testing.
  - a. Investigating supervisor(s) determining reasonable suspicion of

substance abuse which, in their opinion, caused, contributed to, or aggravated an action of misconduct will:

- 1) Notify the appropriate command personnel and IIU following the same procedure as in Sections A.4.c., A.4.d., and A.4.e.
  - 2) If the command officer agrees, the employee will immediately be ordered to paid, on-duty status.
  - 3) Follow the on-duty procedure as in Section A.
2. If the incident is not related to the capacity of or authority as a police officer, handle the instance of substance abuse according to state law.
    - a. Notify the shift OIC of the district of occurrence.
      - 1) The shift OIC will notify the unit commander of the district of occurrence and the on-duty command officer.
    - b. Process off-duty Operating a Vehicle Under the Influence (OVI) offenses according to state law.
    - c. Handle incidents involving the possession, preparation for sale, or trafficking of illicit controlled substances according to state law.
- C. Random Alcohol and Drug Testing for Sworn Personnel
1. The Police Department designed a random drug urinalysis-screening program to detect the use of dangerous, harmful, and detrimental substances, hallucinogens, and marijuana.
    - a. Sworn personnel should not use prescription medication of a family member or coworker. It could result in a positive test.
  2. CONCENTRA will conduct a nine panel urine drug screen for the drugs listed below. Testing for additional drugs may also be done.
    - a. Cannabinoids (Marijuana, Metabolite)
    - b. Benzoylecgonine (Cocaine, Metabolite)
    - c. Opiates (Codeine, Morphine, Hydrocodone, Hydromorphone, Oxycodone)
    - d. Amphetamines (Amphetamine, Methamphetamine)
    - e. Phencyclidine
    - f. Barbiturates (Phenobarbital, Secobarbital, Pentobarbital, Butalbital, Amobarbital)
    - g. Benzodiazepines (Oxazepam, Nordiazepam, Alpha OH-Alprazolam, Temazepam)
    - h. Propoxyphene
    - i. Methadone

- j. Ecstasy
- 3. Deep lung air will be tested for Blood Alcohol Concentration (BAC).
- 4. All sworn personnel are subject to random alcohol and drug testing.
- 5. An independent computerized probability sampling process known as "Simple Random Selection with Replacement" will select sworn Department personnel for random alcohol and drug testing. The program ensures each sworn employee has an equal probability of selection each time the Department initiates a random test.
  - a. Twenty percent of personnel chosen from the random sampling will also be chosen for alcohol testing.
- 6. The Police Chief determines the frequency of testing.
- 7. All sworn personnel will submit to urinalysis drug testing prior to being assigned or detailed to, and upon leaving, any high risk specialized assignment. Sworn members assigned to high risk specialized assignments will be tested more frequently. This includes the Police Chief, all assistant chiefs and captains, as well as sworn personnel assigned to the following:
  - a. Narcotics Unit
  - b. Vice Squad
  - c. Court Property Unit
  - d. All District Violent Crimes Squads
    - 1) The supervisor of an officer entering or leaving a district Violent Crimes Squad will notify Inspections Unit of the drug test by fax and include where the officer is transferred/detailed from and transferred/detailed to. This will include the officer's name, badge number, and the effective transfer/detail dates to and from the Violent Crimes Squad.
  - e. Internal Investigations Unit
  - f. Inspections Unit
  - g. Fugitive Apprehension Squad
  - h. Investigative Support Squad
  - i. SWAT & Tactical Coordination Unit
  - j. Canine Officers
  - k. Gang Enforcement Squad
  - l. Probationary Police Officers (PPOs)
- 8. Inspections Unit will notify shift or unit supervisors when the computer selects any of their personnel for testing.

- a. Officers utilizing sick time following the notification of alcohol and drug testing will be tested on the date returning to work.
  - b. Officers attending training must respond for testing unless training is conducted outside of Hamilton County, Ohio, or Boone County, Kentucky.
9. A supervisor will notify on-duty sworn personnel, randomly selected for alcohol and drug screening, in writing by placing notification in the blotter.
- a. The Inspections Unit Commander will provide personnel selected for alcohol and drug screening with a Form 96, Random Drug Testing Notification.
    - 1) Inspections Unit retains the original copy of the Form 96.
    - 2) The officer will retain a copy of the Form 96.
  - b. Off-duty sworn personnel will not be ordered to on-duty status for the purpose of random alcohol and drug testing.
10. Officers will comply with the instructions received from screening personnel at the collection site.
- a. The officer must present their driver's license and Department ID card to confirm their identity.
  - b. The bathroom facility of the testing area is private and secure.
    - 1) Testing personnel will search the facility before and after the sworn member provides the urine sample to ensure it is free of any foreign substances.
    - 2) The testing person will place color dye in the toilet bowl water.
11. The officer being tested will remain at the collection site in full view of laboratory personnel, except while providing the sample, until an acceptable urine sample is produced by the employee (maximum of three hours).
- a. If the officer is unable to urinate (shy bladder) for the random drug test, the laboratory technician will allow the officer to consume up to 40 ounces of liquid. If the officer leaves without urinating before the three-hour limit, the officer will be deemed as having refused to take the test. The refusal will be seen as a positive drug test and appropriate action taken.
  - b. Officers unable to urinate within the three-hour time limit will be immediately taken to EHS and examined by a physician to determine if a health reason exists which prevents the individual from urinating. If the physician determines there is a health reason for not urinating, the test will be classified as indeterminate. The officer must have the problem medically corrected and submit to another drug test. If the physician determines no health reason exists to prevent the officer from urinating, the officer is deemed to have refused to take the test and appropriate action will be taken.

- 1) If this occurs during other than normal work hours, the officer will be directed to see the EHS physician the next business day, prior to returning to duty.
  - c. Officers unable to provide an adequate breath sample (shy lung) will be immediately taken to EHS and examined by a physician to determine if a health reason exists which prevents the individual from providing an adequate breath sample. If the physician determines that no physical condition exists that would have prevented the employee from providing a specimen, the employee shall be deemed to have refused to take the test and appropriate action will be taken.
    - 1) If this occurs during other than normal work hours, the officer will be directed to see the EHS physician the next business day, prior to returning to duty.
12. Method of Testing for Alcohol
- a. Deep lung air will be tested for Blood Alcohol Concentration (BAC).
  - b. Any officer giving a completed breath test that is considered to be a positive test will be retested in 15 minutes. The result of the second test is final.
    - 1) A completed breath test result below .02 BAC will be considered a negative test.
    - 2) A completed breath test result .02 BAC to .039 BAC will be considered a negative test. However, the officer will be returned to their district/section/unit of assignment and placed on desk duty for the remainder of their shift.
      - a) The officer will not be permitted to drive and will be transported to their district/section/unit by another officer.
      - b) The officer will not be subject to disciplinary action.
    - 3) A completed breath test result of .04 BAC to .079 BAC will be considered a positive test. After alcohol and drug testing, the employee will be transported home and placed in a SWP status or SWOP for the remainder of the shift.
      - a) The on-duty command officer will notify the Police Chief before the employee's next tour of duty. The command officer will recommend the return to duty or the suspension of the employee. On weekends or holidays the command officer will notify the Administrative Duty Officer and make his/her recommendations.
      - b) The Police Chief or acting Police Chief will hold a hearing before the member's next tour of duty.
        - 1) IIU will notify the employee to attend the hearing.

- 2] The Police Chief will determine whether to suspend the member pending a disciplinary hearing or return the member to duty.
- 4) A completed breath test of .08 or above will be considered a positive test. The officer will immediately be relieved of his/her official identification, badge, wreath, Department firearm, ammunition, BWC, school access card and TASER. After drug/alcohol testing, the employee will be transported home and placed in a SWP status or SWOP for the remainder of the shift.
    - a) The on-duty command officer will notify the Police Chief before the member's next tour of duty. The command officer will recommend the return to duty or the suspension of the member. On weekends or holidays the command officer will notify the Administrative Duty Officer and make his recommendations.
    - b) The Police Chief or acting Police Chief will hold a hearing before the member's next tour of duty.
      - 1] IIU will notify the member to attend the hearing.
      - 2] The Police Chief will determine whether to suspend the member pending a disciplinary hearing or return the member to duty.
    - c) Prior to returning to duty, an officer with a positive breath test of .04 BAC or above, shall submit to an alcohol test. The officer may return to duty once a negative alcohol test has been obtained.

### 13. Method of Testing for Drugs

- a. The urine sample will be split into two portions for testing purposes.
- b. The initial drug test will be an Enzyme Multiple Immunoassay Testing (EMIT) procedure performed on one of the specimen portions. This is a Substance Abuse Mental Health Services Administration (SAMHSA) certified method of testing.
  - 1) The second portion will be held for additional testing as outlined in Section C.15.
- c. If the initial drug screen test indicated a positive result, the laboratory will ensure a confirmation test is completed. The confirmation test will be a Gas Chromatography/Mass Spectrometry (GC/MS) procedure. This is also a SAMHSA certified method of testing.
- d. The Medical Review Officer (MRO) will contact the officer regarding the confirmed positive prescription drug test. The officer will have the opportunity to provide the MRO with a current prescription drug container, prescribed to the officer, and the identity of the

prescribing/dispensing physician or health care provider for confirmation. No other City employee or agent will be informed of the confirmed positive test until the verification is held.

- 1) The MRO will contact the testing laboratory in an effort to verify that the prescription drug presented by the officer matches the drug identified in the confirmed positive drug screen test.
  - 2) If the prescription drug and the drug identified in the confirmed positive drug screen test match, the drug screen test will be considered a negative drug screen test result.
- e. All records relating to the negative drug screen test will become part of the officer's medical record and remain confidential and restricted at EHS.
  - f. The testing laboratory will forward all test results only to the EHS physician in an envelope marked "Personal and Confidential".
  - g. The EHS physician will determine the duty status of the officer using the prescription drug.

#### 14. Positive Drug Screen Test Result

- a. The drug screen test will be considered a positive drug screen test result if:
  - 1) The prescription drug and the drug identified in the confirmed positive drug screen test do not match, OR
  - 2) The officer is unable or refuses to provide the MRO with a current prescription or prescription drug container, prescribed to the officer, and the identity of the prescribing/dispensing physician or health care provider for confirmation, OR
  - 3) The drug identified in the confirmed positive drug screen test is included on the U.S. Department of Justice DEA list of controlled substances.
- b. EHS will immediately notify the Inspections Unit commander and IIU commander on all confirmed and verified positive drug screen results. Inspections Unit, via chain of command, will notify the Police Chief or acting Police Chief.
- c. IIU personnel will attempt to make contact with the officer to conduct a preliminary, fact finding investigation.
  - 1) If the officer is on duty when the preliminary investigation is conducted, IIU personnel will determine if there is reasonable suspicion of substance abuse and to what extent the member is impaired.
    - a) If IIU determines the officer is impaired, Sections A.5.a. and A.5.b. of this procedure will be followed.
- d. The Police Chief or acting Police Chief will determine the duty status of

the officer based upon the results of the IIU preliminary investigation.

- 1) If the Police Chief or acting Police Chief determines the officer's police powers will be suspended, IIU personnel will notify the officer of the change in duty status and retrieve department property as required by the suspension process.
  - 2) Whether on or off duty, the officer will be instructed to respond to the IIU office to be interviewed upon reporting for their next tour of duty.
- e. After the IIU interview conducted during their next tour of duty, the officer will be ordered to immediately respond to CONCENTRA to have an additional drug test conducted, then return to their unit of assignment.
- f. When the results of the subsequent drug test are received, the Police Chief or acting Police Chief will determine if the officer will be restored to full duty status.
- 1) IIU will complete the investigation and provide its findings to the Police Chief for his review and disciplinary action.
- g. In addition to any discipline received, the officer will be subject to more frequent drug screen testing.
- 1) The hearing officer will recommend the frequency and duration of the additional drug screen testing.
  - 2) The Inspections Unit Commander will determine the schedule of additional testing as outlined by the Inspections Unit SOP.
15. A sworn member whose drug screen test result is confirmed and verified positive may demand the second portion of the split urine specimen be tested by a SAMHSA certified laboratory of the officer's choosing.
- a. The officer must submit a written demand for a second test to the SAMHSA certified laboratory which processed the random drug screen sample and issued the positive test result within ten working days following the date on which the officer received notification of the positive test.
  - b. The SAMHSA certified laboratory that issued the positive test result will send the second portion of the split urine sample to the SAMHSA certified laboratory chosen by the employee for the second drug screen test within 72 hours after receiving the written demand.
  - c. Appropriate chain of custody procedures, mutually approved by the City and the FOP, will be closely followed in all cases.
  - d. The officer will pay the re-testing expenses related to the second drug screen test. If the drug screen test from the laboratory chosen by the employee is negative, the City will fully reimburse the officer for the cost

of the second drug screen test.

16. Civilian Employees

- a. Civilian employees are not covered by this random drug testing policy.
- b. Civilian employees are subject to the Substance Abuse Policy approved by the City Manager.