

FREDERICK POLICE DEPARTMENT GENERAL ORDER

Section 19: Employee Well-Being **Order Number:** 1908
Topic: EMPLOYEE DRUG AND ALCOHOL TESTING **Issued by:** Chief of Police
Approved: 06/01/14
Review: Annually in January by Support Services Division Commander
Supersedes: General Order 1908 dated 01/01/03 and City of Frederick Drug and Alcohol Testing Policy (FOP Contract Appendix "D") dated July 1, 2011

.01 PURPOSE:

To describe the Alcohol and Drug Testing Policy and Program of the Frederick Police Department.

.02 CROSS-REF:

G.O. [1210](#), "Manpower Availability"
G.O. [1312](#), "Police Volunteer Auxiliary"
G.O. [1615](#), "Internal Investigation Procedures"
G.O. [1662](#), "Work Performance"
G.O. [1805](#), "Selection Process for Sworn Personnel"
G.O. [1807](#), "Selection Process for Civilian Personnel"
Labor Agreement
Form HRD-026 [Notice of Random Drug Testing](#)

.03 DISCUSSION:

The Frederick Police Department recognizes the importance and responsibility in providing a safe and healthy work environment for all employees, the successful accomplishment of the Department's law enforcement mission, and the need to maintain employee productivity. The Department is dedicated to providing a drug-free workplace and to assisting employees who seek help for problems with either drug or alcohol abuse. However, alcohol and/or drug abuse does not excuse an employee's neglect of duty. Department employees whose work performance is impaired as a result of the use or abuse of alcohol or drugs may be disciplined in accordance with regulations and/or laws in place. Likewise, the use of drugs or alcohol outside the workplace or outside work hours which impact work performance are considered just as serious as activities that occur during working hours. Alcohol and drug abuse is considered a serious problem regardless of when or where the abuse takes place and regardless of whether it has an immediate impact on work. Although this program primarily outlines the conditions when the Department can test employees for drug or alcohol use, the City encourages employees with problems not to wait for a test to be conducted, but to seek assistance as soon as possible.

.04 POLICY:

It is the policy of the Frederick Police Department that employees, as well as members of the Uniformed Auxiliary, whether reporting for a tour of duty or who are in a scheduled "on-call" status as defined in G.O. 1210, "Manpower Availability," will not appear for duty nor be on-duty while intoxicated by, or under the influence of, alcohol or drugs with a blood or breath alcohol level of .02 or greater, nor with the odor of alcoholic beverages on their breath or about their person. Further, employees will not sell, possess (except during the authorized execution of their official duties), distribute, or use illegal drugs at any time, nor will they sell, possess, distribute, or use alcoholic beverages while on duty unless specifically permitted to do so by general orders.

Applicants for safety-sensitive positions will be tested for illegal drug use as a part of their pre-employment screening. Employees in safety-sensitive positions will be tested for drug use on a

random basis as outlined in this Order. Employees may also be drug and/or alcohol tested when reasonable suspicion exists that they have violated this or any other general order concerning drug or alcohol use.

The Department will provide support and guidance to any employee who seeks assistance with a drug and/or alcohol problem.

.05 DEFINITIONS:

CITY PREMISES – all land, property, buildings, structures and installations, vehicles and equipment owned by or leased to the City of Frederick.

EMPLOYEE – all employees of the Frederick Police Department, both sworn and civilian. For the purposes of this Order, “employee” also includes volunteer members of the Uniformed Auxiliary.

ILLEGAL DRUG – any controlled substance, including but not limited to opiates, heroin, hallucinogens, marijuana, mescaline, peyote, PCP, prescription drugs, amphetamines and barbiturates which are not obtained and used under a prescription lawfully issued to the employee possessing the same and any other substances including those listed in the Federal Controlled Substances Act or its regulations or unlawful under any other law.

RANDOM TESTING – a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs, and may either be:

1. uniform- unannounced testing of safety-sensitive employees occupying a specified area, element or position; or,
2. a statistically random sampling of employees based on a neutral criterion.

MEDICAL REVIEW OFFICER (MRO) – a physician trained to interpret the results of a drug test.

.10 ILLEGAL DRUG AND ALCOHOL TESTING PROGRAM:

The program includes the following types of illegal drug and alcohol testing:

1. Pre-employment testing- to maintain the high professional standards of the Department’s work force, it is imperative that individuals who use illegal drugs or abuse alcohol be screened out during the initial employment process before they are employed by the City. This process has a positive effect on reducing instances of illegal drug use and alcohol abuse by employees, and will provide for a safer work environment. Drug testing will be required of all applicants for City employment. Every vacancy announcement for positions within the Department will state that all applicants tentatively selected for the position will be required to submit to urinalysis to screen for illegal drug use prior to appointment. In addition, each applicant will be notified that appointment to the position will be contingent upon a negative drug test result. The Personnel Unit will direct applicants to the appropriate testing facility. The testing methodology will be the same as the methodology for testing employees as set forth in Section .15 of this Order.
2. Random testing of those employees in safety sensitive positions that have been designated as such.
 - A. Among the factors the Department has considered in designating a position as safety-sensitive and thus subject to random drug and alcohol testing are the extent to which the Department considers the position:
 - (1) is inconsistent with illegal drug use or alcohol abuse;

- (2) involves law enforcement activities;
 - (3) requires the employee to foster public trust by preserving the employee's reputation for integrity, honesty, and responsibility;
 - (4) has City security responsibilities;
 - (5) has drug or alcohol interdiction responsibilities;
 - (6) requires the employee to engage in activities affecting public health or safety;
 - (7) requires the employee to operate a City-owned vehicle or other machinery or equipment that affects public health or safety; or,
 - (8) authorizes the employee to carry a firearm.
- B. These positions are characterized by safety or security responsibilities related to the mission of the Department. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, and law enforcement. These positions are identified for random testing because they require the highest degree of trust and confidence. The Department reserves the right to add or delete positions determined to be safety-sensitive positions pursuant to the criteria established in this program.
- (1) All employees of the Frederick Police Department, both sworn and civilian, are classified as employees in safety-sensitive positions.
 - (2) Additionally, members of the Uniformed Auxiliary are classified as employees in safety-sensitive positions for the purpose of this Order.
- C. In implementing the program of random testing, the Department will:
- (1) ensure that the means of selection for random testing conducted by the testing laboratory is appropriate and not subject to alteration or influence; and,
 - (2) evaluate periodically whether the numbers of employees tested and the frequency with which those tests were administered satisfy the Department's duty to achieve a drug and alcohol free work force.
- D. The procedure for administering random drug testing will be as follows:
- (1) CorpOHS, through their MRO Coordinator, will randomly select employees by using a random-selection computerized system.
 - (2) CorpOHS will then provide the City's Safety Department with the names of those employees selected for random testing.
 - (3) The City's Safety Department will then notify the supervisor of each selected employee via email and will attach a copy of the written notification.

- (4) The supervisor will then personally notify the employee that he has been selected for random testing and will provide the employee with a copy of the written notification. To ensure the integrity of the random drug testing program, supervisors will ensure this notification is made in person to ensure the employee complies with the requirements of the written notification, mainly, to immediately report to the testing facility.
- (5) The employee will then report immediately for testing as indicated on the written notification. Testing hours for CorpOHS are 0700-1700 Monday – Friday. In the event an employee reports for duty at a time when the testing laboratory is not open, the employee will be notified one hour before he is to report for testing, on the first day that the testing laboratory is open. Testing will be done during the employee’s regular on-duty hours unless the employee is specifically authorized to test outside of normal working hours.
- (6) The notification to the employee will explain that the employee’s name was selected randomly.
- (7) Employees who do not have Department transportation will be provided transportation to the testing laboratory.
- (8) An employee selected for random drug testing may obtain a deferral of testing if the Commander, Support Services Division agrees that a compelling need necessitates a deferral. An employee whose random test is deferred will be subject to an unannounced test as soon as possible, at a time to be determined by the Commander, Support Services Division.

3. Reasonable Suspicion Testing

- A. An employee is subject to drug and/or alcohol testing when the employee reports to work, operates or uses Department equipment, or takes police action **and** there is reasonable suspicion that the employee is under the influence or impaired by alcohol or drugs. Reasonable suspicion testing, whether during business hours or on an on-call basis, will be conducted by CorpOHS. “Reasonable suspicion” is a belief based on objective and articulable facts sufficient to lead a prudent supervisor to suspect that the person is using alcohol or illegal drugs. Reasonable suspicion may be based upon, among other things:
 - (1) observable phenomena, such as direct observation of illegal drug or alcohol use or possession, and/or the physical symptoms of being under the influence of a drug or alcohol;
 - (2) a pattern of abnormal conduct or erratic behavior;
 - (3) arrest or conviction for a drug or alcohol related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
 - (4) information provided by reliable and credible sources and independently corroborated; or,
 - (5) newly discovered evidence that the employee has tampered with a

previous drug and alcohol test.

- B. If an employee is suspected of using illegal drugs or consuming alcohol, the employee's immediate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. In the case of suspected alcohol consumption, the supervisor will follow the mandates of General Order 1615, "Internal Investigation Procedures," including the possibility of the use of a Preliminary Breath Test, to further his investigation.
 - C. The supervisor will immediately contact his Division Commander or, in his absence, another Commander or a Bureau Commander, who will review the facts presently available and, if appropriate, authorize the test. During business hours (M-F, 0700-1700 employees will be escorted to CorpOHS for testing. After hours, the supervisor should call 800/480-8717 and request a technician for testing. The technician will call the supervisor back and arrange for testing.
 - D. The immediate supervisor will prepare a written report detailing the circumstances that formed the basis to warrant the testing. This report should include the appropriate dates and times of reported drug and alcohol related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken. This report must be completed prior to the end of the supervisor's working day.
 - E. All supervisory personnel will be trained by CorpOHS to address illegal drug use and alcohol abuse by employees, to recognize facts that give rise to reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion.
 - F. Employees who are subject to reasonable suspicion testing may be placed on administrative leave with pay until the results of any reasonable suspicion test are received.
4. Accident or Unsafe Practices Testing
- A. Employees involved in on-the-job accidents or who engage in unsafe on-duty activities that pose a danger to others or the overall operation of the Department may be subject to testing. The employee's immediate supervisor, with the approval of the Division or other Command member, may initiate testing when such circumstances of the accident or unsafe practice give reasonable suspicion that drug or alcohol use may have been a contributing factor.
 - B. Employees will not be "routinely" tested as a result of their involvement in motor vehicle collisions.
5. Follow-up Testing
- All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use or alcohol abuse through the City of Frederick Employee Assistance Program will be subject to unannounced testing following completion of such a program for a period of one year. Such employee will be tested at a frequency deemed appropriate by the Commander, Support Services Division. Such testing is distinct from testing which may be included as a component of the Employee Assistance Program.

.15 TESTING METHODOLOGY:

1. Testing Procedure

- A. All drug and alcohol testing samples are to be collected by or under the supervision of a laboratory or clinic selected by the Department. All samples will be tested and analyzed by a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) and permitted by the State of Maryland and the Department of Health and Human Services. As of the date of this General Order, CorpOHS is designated as the collection facility. CorpOHS will send all specimens for the Department to an approved certified testing laboratory as described above. The Department may designate another collection facility or laboratory meeting the same qualifications if it is believed in the best interests of the Department and/or employees to do so.
- B. Any employee or applicant subject to drug testing under this program will be permitted to provide urine specimens in private, in a rest room or similar enclosure so that the employee is not observed while providing the sample. However, collection site personnel of the same gender as the individual tested may observe the employee provide the specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided.
- C. All costs of testing, except the costs of any independent testing requested by an employee, will be paid by the Department.

2. Failure to Appear for Testing

- A. Any employee subject to random testing is required to report for testing at CorpOHS within one hour of being notified, unless deferred by the Commander, Support Services Division, the Chief of Police or his designee.
- B. Employees directed to submit to reasonable suspicion testing will be escorted/transported to the testing location without delay.
- C. Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to disciplinary action, up to and including dismissal. An applicant who fails to appear for testing will be considered ineligible for employment with the City.

3. Positive Test Result

- A. A breath or blood alcohol test result of .02% or higher will be considered a positive test result. Employees may have an independent test performed at their own expense after any reasonable suspicion test.
- B. A specimen of an employee or applicant who tests positive on an initial test (an EMIT screening test) will be confirmed by an additional screening test and a Gas Chromatography/Mass Spectrometry (GC/MS) methodology test. The following are the stipulated minimum levels of drug metabolites for the initial and confirmatory tests:

| <u>Substance</u> | <u>Initial Test Level</u> | <u>Confirmation Test Level</u> |
|-------------------------|----------------------------------|---------------------------------------|
| Amphetamine | 1000 ng/ml | 500 ng/ml |
| Barbiturates | 300 ng/ml | 100 ng/ml |
| Benzodiazepines | 300 ng/ml | 100 ng/ml |
| Cannabinoids | 50 ng/ml | 5 ng/ml |
| Cocaine | 300 ng/ml | 100 ng/ml |
| Opiates | 300 ng/ml | 100 ng/ml |
| Phencyclidine (PCP) | 25 ng/ml | 5 ng/ml |

- C. When a confirmed positive result has been returned by the laboratory, the test results will be delivered directly to the MRO.
- D. The MRO will make contact and schedule an appointment with the employee or applicant to conduct a medical interview to review the employee or applicant's medical history or other relevant biomedical factors. The doctor must review all medical records made available by the tested employee or applicant when a confirmed positive test could have resulted from legally prescribed medication. The employee may request a new test of the same sample by a laboratory of the employee's choice. The Department will not pay the cost of any tests requested by the employee/applicant.
- E. If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO will immediately contact the Employee Assistance Program Administrator (unless the subject is an applicant) and the Commander, Support Services Division upon obtaining a verified positive test result. Until there has been a determination of no justification for the positive test result, no individuals, except the testing laboratory, the MRO, and the tested subject will be informed of the test or its results. Only the employee/applicant may waive this confidentiality requirement.
- F. An employee whose positive test results are confirmed is required to attend all appointments with the Employee Assistance Program counselor and to follow the counselor's instructions. This requirement applies to employees who may or may not have problems requiring treatment. The Employee Assistance Program counselor, and not the employee, will determine the extent of the problem together with recommended treatment. Insurance will cover the costs of treatment to the extent covered by the insurance plan under which the employee is covered. An applicant whose positive pre-employment test results are confirmed will be considered ineligible for employment with the Department.

.20 CONFIDENTIALITY:

- 1. The SAMHSA certified laboratory selected by CorpOHS may disclose laboratory test results only to the MRO. Any positive result which the MRO justifies by acceptable and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results will be protected and

may not be released to the public. The MRO may maintain only those records necessary for compliance with this program. Any records of the MRO, excluding test results, may be released to any management official of the Department for purposes of auditing the activities of the Department doctor, except that the disclosure of the results of any audit may not include personal identifying information on any employee.

2. In order to comply with the confidentiality requirement, the results of a drug and/or alcohol test of a Department employee may not be disclosed without the prior written consent of such employee, unless the disclosure of a positive test result would be to the MRO. If the positive test is confirmed to be without justification (a "verified positive test result"), then the positive result may be disclosed:
 - A. to the Employee Assistance Program Administrator in which the employee is receiving counseling or treatment or is otherwise participating;
 - B. to the Chief of Police, who may give the results to the supervisor and commander of the employee, to the Commander of Professional Standards for possible investigation in accordance with G.O. 1610, et al, and to the Commander, Support Services Division for program administration and record keeping purposes; and/or,
 - C. where required by the City to defend against any challenge against any adverse personnel action.
3. Any employee who is the subject of a drug and alcohol test will, upon written request, have access to any records relating to such employee's test. Except as authorized by law, an applicant who is the subject of a test, however, will not be entitled to this information.
4. All drug and alcohol testing information specifically relating to individuals is confidential and will be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this requirement and to make information readily retrievable, the Commander, Support Services Division will maintain all records relating to reasonable suspicion testing, suspicion of tampering with evidence, and any other authorized documentation necessary to implement this program. All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the Commander, Support Services Division and will remain confidential.

.25 DISCIPLINE:

A confirmed positive test result without justification may, in the discretion of the Chief of Police, result in the triggering of the disciplinary process or may result solely in non-disciplinary remediation. All disciplinary action will proceed pursuant to the requirements of State law and the Department's disciplinary guidelines. Any disciplinary action will be separate and in addition to any remedy through the Employee Assistance Plan.