

LAW ENFORCEMENT MANAGEMENT INSTITUTE

DRUG TESTING - ADMINISTRATIVE NIGHTMARE

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202

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ABSTRACT**DRUG TESTING - POLICE AND NARCOTICS OFFICERS**

The lack of the "governmental" interest in drug testing may be related, in part, to the fear of civil liability. If a drug abuse problem exists within a law enforcement organization, liability could attach if it were established that an officer's injurious conduct was directly linked to the failure of the department to detect and resolve the drug abuse problem. While it is not suggested that fear of civil liability is the primary issue behind the question of urinalysis drug testing, it is a legitimate interest to be considered in the Fourth Amendment's balancing test.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	ii
ABSTRACT.....	iii
TABLE OF CONTENTS.....	iv
SECTION	
I. INTRODUCTION: NATURE AND SIGNIFICANCE OF THE PROBLEM.....	1
The Nature and Significance.....	1
Police Officer-Probationary and Tenured.....	4
Safety Sensitive Jobs-Narcotics, Vice and Tactical.....	8
II. VIEWS OF DRUG TESTING FROM OTHER SELECTED STATES..	10
St. Paul Police Department-Policy and Purpose.....	11
Boston Police Department-Policy and Purpose.....	14
Dallas Police Department-Policy and Purpose.....	14
Model Drug Testing Policy for a Mid-Size Police Department.....	15
III. DRUG TESTING - ADMINISTRATIVE NIGHTMARE.....	34
Major Findings.....	35
Newest Critical Finding.....	36

TABLE OF CONTENTS (continued)

SECTION	PAGE
IV. CONSTITUTIONAL ISSUES.....	43
Fourth Amendment.....	45
Individual Privacy.....	46
Government Interests.....	46
V. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS.....	47
VI. APPENDIXES.....	49
A. St. Paul Police Department Procedure.....	49
B. Boston Police Department Procedure.....	56
C. Dallas Police Department Procedure.....	72
VII. ENDNOTES.....	83
VIII. SELECTED BIBLIOGRAPHY.....	85

SECTION I

INTRODUCTION: NATURE AND SIGNIFICANCE OF THE PROBLEM

The Nature and Significance

The availability and widespread use of illegal drugs is a cause of national alarm today. Reports of drug abuse come from every segment of our society. Thus, it should come as no surprise that the police have not been immune to the contagion of drug abuse. Police officers experience stress and trauma in their jobs and some may turn to drugs as a means of coping. Consequently, drug use by police officers has become an important issue for every police chief in the nation. Because of its potential threat to the integrity of law enforcement and the safety of the community the problem is receiving national media attention.¹

The menace that drug abuse poses for today's society is beyond question. Its adverse effects are many and substantial.

1. In June of 1986, a University of Maryland athlete dies from cocaine ingestion.
2. Economic damage of staggering proportions, including lost productivity and medical expenditures totalling \$120 billion annually, has made society, itself, a victim of drug abuse.

3. Since 1975, 50 railroad accidents or mishaps, resulting in 37 deaths, have been attributed to drug or alcohol impairment.
4. Crime statistics show direct relationship to drug abuse. In the District of Columbia, 61% of all arrested persons between the ages of 13-25 years tested positive for the ingestion of one or more drugs.²

Drug use, the availability and widespread use of illegal drugs, has caused national alarm. So what about police officers?

To learn how police departments are addressing this problem, the National Institute of Justice sponsored a telephone survey of 33 major police departments in September, 1991. The survey was conducted by Research Management Associates, Inc., of Alexandria, Virginia. Of the 33 departments surveyed, 24 had drug testing programs and explained their testing procedure, selection process, and what procedures were used after a positive test. They also discussed whether treatment programs were available and whether random testing had ever been considered. Departments also provided information on the types of tests conducted, the administration of the test, the procedures

used to establish chain of custody and the costs of the test.

Key findings from the survey indicate that:

- 73 percent of the departments surveyed were conducting drug screening tests of applicants.
- Virtually all departments had written policies and procedures for conducting tests when there was reason to suspect that officers were using illegal drugs.
- 21 percent said they were considering mandatory testing of all officers.
- 24 percent indicated that treatment (rather than dismissal) would be appropriate for officers under some circumstances, generally depending on the type of drug and severity of the problem.³

These results show that many police managers are taking steps to make their departments as drug-free as possible.

Most policies call for:

- Testing applicants and recruits for drug or narcotics use as part of their pre-employment medical exam.
- Testing a current employee when documentation indicates that the employee is impaired or incapable of performing assigned duties, or

experiences reduced productivity, excessive vehicle accidents, high absenteeism, or other behavior inconsistent with previous performance.

- Testing a current employee when there are allegations involving the use, possession, or sale of drugs or narcotics, or the use of force, or there is serious on-duty injury to others.
- Requiring current sworn employees assigned to drug, narcotics, or vice enforcement units to submit to periodic drug tests.⁴

Police Officers - Probation and Tenured

It seems evident that drug tests have become a key feature of many police department programs to detect and deter the use of illicit substances by employees. Testing may occur as part of the screening process for applicants, a requirement during the probationary period, as a condition of accepting a transfer, promotion or assignment to a sensitive position, when officers are suspected of drug use because of behavior or work performance, or as part of a required annual physical.⁵

Probationary Officers - Testing probationary officers is a standard procedure in some police departments. In August, 1986 the New York Police Department administered urinalysis testing for drugs, including marijuana, to more

than 5,000 probationary officers. Only 18 officers (0.35 percent) showed positive results. While the probationary officers knew they would be tested three times between their recruitment date and the end of their 18 months probationary period, they did not know the exact dates of the testing.

In August, 1989 another urinalysis was administered in the New York Police Department. The administration was shocked by the outcome of the second drug test. An alarming increase from less than 1 percent in 1986 to an overwhelming 14 1/2 percent in positive findings in only a three year span.⁶

In October of 1989, all applicants for safety sensitive positions will be required to undergo drug screening and confirmation testing as a component of the physical examination administered to applicants for those positions. Also, a probationary employee may be required to take a drug screening and confirmation test, or an alcohol test, administered in accordance with the directive upon reporting for work, or during work hours, when there is reasonable suspicion to believe that the employee has ingested, inhaled or injected a drug into the body or ingested an alcoholic beverage.⁷

The table below shows local policies for 24 police departments which indicated some type of drug testing procedure in the aforementioned National Institute of Justice survey. Of the 24 departments, 15 conducted tests of job applicants. In all 15 departments, applicants were rejected when the test was positive. The survey did not request information on percentage of applicants rejected. However, local newspapers have reported that 20 to 25 percent of the applicants for uniformed positions in some large urban departments have shown positive urinalysis results.⁸

Table 1
Job Categories and Events Tested in Surveyed Departments

Job Category and Event Tested	Number of Departments	Percent
Job applicant	15	62.5%
Probationary Officer	5	20.8%
Officer Seeking Transfer to Sensitive Jobs	3	12.5%
Officers in Sensitive Jobs	4	16.7%
After Auto Accident	2	8.3%
Scheduled Testing	1	4.2%

Table 1 indicates that 15 of the 24 departments surveyed, or 61.5 percent, test job applicants for drug usage.

Tenured Officer - Departments test tenured officers for several reasons. In many instances, officers can be required to submit to a test when they are suspected of drug abuse. Suspicion can occur as a result of a job performance review, a specific incident (such as a traffic accident or shooting), or an internal affairs investigation.⁹ Periodic testing of tenured officers may also be a precondition for employment. For example, Boston Transit police officers agree to allow periodic testing when they are hired, and one department in the survey includes a drug test as part of an officer's annual physical (Dallas, Texas).

The goal in hiring new law enforcement officers is to select persons who are both qualified and able to perform the duties and responsibilities to which they will be assigned. The application process identifies those persons who are qualified to serve as law enforcement officers. The training and probationary periods identify those individuals who are capable of completely fulfilling those duties and who are deserving of retention as tenured career officers. Drug testing of urine may be an appropriate way to accomplish this goal.¹⁰

Sensitive Jobs - Narcotics, Vice and Tactical

With regard to a change of assignment not involving a promotion, a critical factor in determining the legality of a mandatory urinalysis drug screen is, in most cases, the nature of the new assignment. If the re-assignment cannot reasonably be expected to increase the risk or adverse consequences of drug abuse, drug testing based solely on a change of assignment raises difficult legal issues.

However, where the change of assignment requires an officer to become more closely associated with narcotics investigations or criminals associated with illegal drugs, a strong argument can be made that it is imperative the re-assigned officer be determined to be free from the abuse and the inclination to abuse drugs, as well as the influence or association with persons known to be criminally involved with drugs. Narcotic officers should be tested at random, every three to six months. Although there are only a few decided cases supporting this type of drug testing, a forceful legal argument can be made by a law enforcement agency which can articulate the specific need for newly re-assigned narcotics or vice officers to be and remain drug-free.¹¹

A similar argument might be made for testing as a condition of promotion. To the extent that consent might not be viewed as sufficient authority to require drug testing of urine before receipt of a promotion, a law enforcement department could reasonably argue that with the prestige of promotion comes the responsibility to be a model representative of the organization. Damage to public trust, poor policy and decision making and lower morale are the unfortunate by-products of drug abuse at any level of a law enforcement organization.¹²

Accordingly, a department might argue that drug testing is needed to insure that only the most competent law enforcement officers receive positions of greater trust and responsibility. Again, there is no reported case law on this type of drug testing, but it is believed a well-reasoned and articulated policy requiring drug testing as a condition of promotion could survive a legal challenge.¹³

SECTION II

VIEWS OF DRUG TESTING FROM OTHER STATES

The United States Supreme Court has held that intrusions "beyond the body surface" are searches within the meaning of the Fourth Amendment to the Constitution. Under the privacy provisions of the Fourth Amendment, individuals have a reasonable expectation to be free from bodily intrusion by the government or an employer. This expectation of privacy clearly extends to the seizure of one's body fluids.¹⁴

The Fourth Amendment only protects individuals from unreasonable search and seizure. Thus, courts must decide whether a police department's drug testing is reasonable under the circumstances. What is reasonable will be determined by balancing the employee's expectation of privacy against the department's policies and interest in testing employees for drug abuse.¹⁵

Generally, the department's interest is the safety of the public and other employees. In fact, the chief executive has a responsibility to review each officer's job performance and ensure that it does not jeopardize the safety of the community. It is generally recognized that the employer has a duty to prevent an employee from causing an unreasonable risk of harm to others. This duty covers

all types of employee problems that may affect job performance, including alcohol and drug use, as well as psychological and physical impairments. In these situations, a department may be held legally liable if it knew, or should have known, that an employee was unable to exercise his or her job responsibility in a careful and proper manner. It is reasonable to conclude that the safety of the community could be endangered by police officers who are impaired by drugs or alcohol.¹⁶

St. Paul Police Department

The policy of the St. Paul Police Department as of December 27, 1989 is as follows:

Purpose: It is mandated from the St. Paul Police Department to initiate measures to ensure that members of this department do not engage in illegal or improper drug or alcohol usage because of the power and authority that comes to each officer from the position he holds, 24 hours a day, on or off duty. There is no escaping this mandate.¹⁷

Policy:

- A. The members of the following units, as a condition of their assignment to the Unit, are subject to drug and alcohol screening as outlined in Section II B. The Units are:
1. Critical Incident Response Team (CIRT)
 2. Ordinance Disposal Unit (ODU)
- Any member who refuses to submit to this form of testing for judgement, fitness and readiness for duty shall be immediately removed from assignment to the special unit. Such removal shall not affect any other assignment the officer may have.

- B. Any sworn officer of this Department who is directly involved in a serious police incident, defined by the following cases:
1. Discharge of a firearm at a human being or a vehicle in which human beings are contained.
 2. Discharge of a firearm for the purpose of issuing a warning shot.
 3. Police vehicle auto accident in which injury is sustained by any involved officer or citizen requiring immediate medical attention by hospital personnel.
 4. Police vehicle chase in which the driver of a motor vehicle flees or attempts to flee a peace officer who is acting in the lawful discharge of an official duty, and such chase involves an automobile accident by either the fleeing vehicle or pursuing police vehicle.
- The officer shall be required to participate in an alcohol screening test immediately following the event, or as soon as the tactical situation allows. The supervisor in charge shall monitor the events to ensure that appropriate officer(s) participate in an alcohol screening test. Such a test shall be the same test as that used by the Department in the processing of suspected violations of D.W.I. statutes. Any officer directly involved who:
1. In case number 1 and 2 actually discharges his/her weapon.
 2. In case number 3 is the driver of the police vehicle in?
 3. In case number 4 is the driver of a chase vehicle involved in or contributing to an automobile accident which the investigating supervisor determines was involved in and/or was a contributing factor to an automobile accident.
- C. An officer shall be required to submit to a drug and alcohol screening test whenever there is a reasonable basis to believe that the officer is improperly using or under the influence of drugs or alcohol. Such reasonable basis testing shall be determined to be appropriate and conducted pursuant to Procedure Section "C".
- D. Any officer who is, via a valid doctor's prescription, using medication that will, after drug screening, test positive, is required to notify the Department Personnel Unit with a

certificate by the prescribing physician that the type and/or prescribed dosage of said medication usage should not significantly interfere or affect the officer's police performance. If the type and/or dosage of prescribed medication does not allow the prescribing physician to so certify the officer's performance, said officer may request the physician to list any limitations to normal police duties on said certificate. In the event the prescribing physician is unwilling or unable to provide such certification or description of limitations, the officer shall nevertheless advise the Police Personnel Unit that he or she has been provided with a prescription which may result in a positive testing.

Upon receipt of information limiting an officer's normal police duties, the Personnel Unit shall immediately notify the Chief of Police of said limitation(s) and request a light duty assignment consistent with said limitation(s). The Department shall take all legal and reasonable steps to provide appropriate light duty assignments and preserve the confidentiality of the medical information provided.

Information received, pursuant to the above, need not specify what illness or injury is being treated, nor need the certificate specify what medication is being taken except as required to alert the Department to positive drug screening results.¹⁸

The unique part of the St. Paul Police Department policy is, if an officer has a problem with drugs or alcohol he/she will be placed on desk or light duty and sent to the proper Critical Incident Response Team (C.I.R.T.) for follow-up assignment (possible medical attention, admission to a hospital or counseling).¹⁹

The positive aspect of this policy is that St. Paul Police Department will stand by its officer as long as that officer does not jeopardize his/her safety or community

safety site.²⁰ If the officer is willing to work with the Critical Incident Response Team, C.I.R.T., and shows an honest effort the officer can avoid termination.

The procedure for the St. Paul Police Department can be found in Appendix A.

Boston Police Department

The policy of the Boston Police Department revised as of April 1, 1990 is as follows:

Purpose: To establish uniform internal policy to govern the administration of a screening process to test and control unauthorized use of illicit drugs among all sworn personnel of the Boston Police Department. The department hereby establishes two base methods of implementing this role to identify department sworn personnel who are users of certain controlled substances.

Policy:

- A. Testing of those individual subjects where facts are sufficient to constitute reasonable suspicion of controlled substances as further described in this procedure. (See Section 4).
- B. A universal random urinalysis procedure. The unique point from the Boston Police Department is, if you are found to test positive during your urinalysis procedure, you will report to a Drug Testing Advisory Committee, who reports to the Commissioner (Chief) only. The committee will randomly pick employees to be tested by computer process unless otherwise to be tested on a reasonable suspicious basis.²¹

The procedure for the Boston Police Department policy can be found in Appendix B.

Dallas Police Department

The policy of the Dallas Police Department revised October 1, 1989 is as follows:

Purpose: The City of Dallas will make a good faith effort to maintain a drug free workplace by complying with the requirements of the Federal Drug Free Workplace Act of 1988, enhancing the health and safety

of employees and public and providing more cost efficient delivery of municipal service. Applicants for safety sensitive positions will be required to undergo a drug screening and confirmation test as a component of a physical examination administered to applicants for these positions. An employee may be required to take drug screening and confirmation test or an alcohol test, administered in accordance with this directive, upon reporting for work or during work hours when there is reasonable suspicion to believe that the employee has ingested, inhaled or injected a drug into the body or ingested an alcoholic beverage.

Policy: This directive outlines the program by which policy, goals and objectives will be met and specifics and defines the procedures to be used in recognizing drug and alcohol use by applicants. For safety sensitive positions and drug and alcohol use and influence among employees and subsequently rejecting applicants and assisting and/or disciplining employees. The unique part of the Dallas Police Department's policy is that you will be tested as an applicant and you will be tested in a safety sensitive position. The policy also expands to all applicants for the City of Dallas. Police and fire departments may be governed by more restrictive policies required by department rules and regulations.²²

The procedure for the Dallas Police Department can be found in Appendix C.

Model Drug Policy for Mid-Size Departments

The City of Duncanville, at this writing, does not have a drug and alcohol testing policy. After informally surveying other police departments across the United States, I feel it is time for all police departments to conform to some type of drug and alcohol policy. Below is a "model policy" for a mid-size police department, such as Duncanville. This policy is based on five department policies in the Dallas

area. The total policy falls in line with larger departments' policies, such as Dallas, Boston and St. Paul.

1. Policy

The City of Duncanville will make a good faith effort to maintain a drug-free workplace, enhance the health and safety of employees and the public, and provide a more cost efficient delivery of municipal services.

Applicants for and transfers to safety-sensitive positions will be required to undergo a drug screening/confirmation test and alcohol test.

An employee will be required to take a drug screening/confirmation test and/or alcohol test, administered in accordance with this policy when there is reasonable suspicion to believe that the employee has ingested, inhaled or injected a drug or ingested alcohol prior to or while on duty.

An employee may be required to take such tests when use of City equipment results in serious injury to himself or another person or damages to the equipment are \$1,000 or more.

An employee in a safety-sensitive position will be required to take such tests at the time of any required physical.

Those employees whose duties regularly involve repetitive exposure to drugs may be required to take such tests on a periodic, unannounced basis. Employees may also be required to take such tests where there is an allegation involving the excessive use of force or when a firearm is discharged resulting in bodily injury, property damage or violation of general orders.

2. Purpose

This policy outlines the program by which policy goals and objectives will be met. It specifies and defines methods and procedures for testing and rejecting applicants and testing, assisting and/or disciplining employees.

3. Scope

This policy applies to all employees in all departments of the City, and all applicants for safety-sensitive positions.

4. Definitions

4.1 Alcohol means any beverage containing more than one-half of one percent of alcohol by volume which is capable of use for beverage purposes, either when alone or when diluted.

4.2 Drug means a controlled substance, controlled substance analogue, narcotic drug or opiate as

defined in Schedules I through V and Penalty Groups 1 through 4 of the Texas Controlled Substances Act, and/or Section 202, Schedules I through V of the Federal Controlled Substance Act, and/or dangerous drug as defined by Section 483.001 of the Health and Safety Code if obtained and/or used without a valid prescription for the user. These include, but are not limited to, marijuana, hashish, cocaine, heroin, morphine, codeine, amphetamines, barbiturates and hallucinogens and substances chemically similar to these drugs.

4.3 Drug testing means collection of a urine specimen by medical personnel and a laboratory analysis of that specimen by Enzyme Immunoassay (EMIT) screening and if the results are positive, confirmatory testing using the Gas Chromatography/Mass Spectrometry (GC/MS) methods and procedures, or other medically acceptable technology deemed appropriate by the City of Duncanville.

4.4 Alcohol testing means testing for blood alcohol content by a breathalyzer instrument device or

drawing or collecting a blood or serum sample suitable for laboratory analysis.

- 4.5 Employee shall mean all regular, full-time, part-time, seasonal and temporary employees.
- 4.6 Department Head means those classifications of the City organization listed in Appendix A.
- 4.7 Assistant Department Head or Division Manager means those classifications in the City organization listed in Appendix C.
- 4.8 Reasonable suspicion means:
- a. a conclusion based on good information and belief produced by a credible and reliable person with knowledge of an employee's possession or use of drugs or alcohol, or
 - b. a conclusion based on personal observation that an employee's conduct is such that his ability to satisfactorily perform his job duties is or may be impaired, due to use of drugs or alcohol. Such inability to perform may include, but is not limited to, a noticeable change in the employee's performance level, impaired judgement or reasoning, a noticeable change in his level

of attention, behavioral changes or decreased ability of the senses.

Physical characteristics indicating reasonable suspicion may be, among others, a pattern of abnormal or erratic behavior, physical symptoms (i.e., glassy or bloodshot eyes, slurred speech, unsteady gait, poor coordination or reflexes) or direct observation of drug or alcohol use.

4.9 Safety-sensitive positions means jobs where an employee's use of drugs or alcohol could create a threat to safety whereby the employee's ability to perform assigned duties is impaired and the performance of those duties in such mental or physical condition creates or could create a safety hazard that has caused, or could cause injury or harm to the employee or other employees or citizens or damage to property.

4.10 Serious injury means any injury which results in a death, or an injury to an employee, passenger, or other person which requires professional medical treatment or which renders the employee unfit to perform routine duties.

5. **Applicants and Employees Subject to Testing**

5.1 The following classes of applicants will be subject to drug and alcohol testing:

- a. Applicants applying for employment in a safety-sensitive position as indicated on the job description.
- b. Any current employee applying for a transfer or promotion into a safety-sensitive position.

5.2 The following employees will be subject to drug and/or alcohol testing:

- a. Those who fall within the definition of reasonable suspicion in Section 4.8.
- b. Those who did not pass a drug and/or alcohol test and who are eligible otherwise to return to work.
- c. Those in safety-sensitive positions are required to take a physical.

5.3 The following employees may be subject to drug and/or alcohol testing:

- a. whose use of City equipment results in serious injury to himself or another person or damages to the equipment are \$1,000 or more.

- b. whose duties regularly involve repetitive exposure to drugs, (testing will be conducted on a periodic, unannounced basis.)
- c. where there is allegation involving excessive use of force.
- d. whose discharge of a firearm results in bodily injury, property damage or violation of general orders.

6. **Applicant Procedures and Notification**

- 6.1 Applicants for safety-sensitive positions will be notified of drug and alcohol testing at time of application. Applicants will be given the opportunity to withdraw their applications at that time.
- 6.2 Applicants will be notified that if hired, they will be required to submit to drug and/or alcohol testing as set forth in Section 5.
- 6.3 Refusal of applicants to submit to drug and alcohol testing will bar employment with the City of Duncanville for a period of one (1) year.
- 6.4 Applicants whose drug and/or alcohol test results in a positive finding will not be eligible for employment with the City of Duncanville for a period of five (5) years.

- 6.5 Applicants taking a prescribed medication within the last six weeks prior to the drug and alcohol test must furnish a medical statement from a physician, specifying the drug(s) being taken. Applicants taking over-the-counter medicine within the last six weeks prior to the drug and alcohol test will be required to provide a list of the over-the-counter medicine(s). If this statement or list is submitted in advance of the drug and alcohol test, the City of Duncanville will not reject an applicant solely because of a positive drug or alcohol test result due to the use of the prescribed medication or over-the-counter medicine and reserves the right to reschedule the applicant for retesting and consideration of employment until 6 weeks after the ingestion of a prescribed medication.
- 6.6 Employees already occupying safety-sensitive positions who seek promotions or transfers into other safety-sensitive positions will be required to submit to drug and alcohol testing as a condition of transfer or promotion. An employee who has been tested within the last 12 months

prior to the promotion or transfer will not be required to be tested.

- 6.7 Employees not occupying safety-sensitive positions who seek promotions or transfer (including reclassifications) into safety-sensitive positions will be required to submit to drug and alcohol testing.

7. **Employee Notification**

Employees will be notified that:

- 7.1 City of Duncanville Personnel Policies and Procedures "Conduct Relating to Substance Abuse" states:

- a. **Use of Alcohol on Duty:** An employee shall not drink intoxicating beverages while on duty, in uniform, or in any City facility. An employee shall not report for work or be on duty while under the influence of intoxicants, or have an odor of intoxicants on his breath.
- b. **Use of Alcohol Off Duty:** An employee while off duty shall refrain from consuming intoxicating beverages to the extent that it results in obnoxious or offensive behavior

which tends to discredit the City or render him unfit to report for his next assigned work day. Off duty alcohol consumption is covered in the policy and procedure manual of the Duncanville Police Department.

- c. **Alcoholic Beverages on City Premises:** An employee shall not bring into or store alcoholic beverages in any City premises or vehicle except where authorized.
- d. **Use or Possession of Drugs:** An employee shall not use or possess dangerous drugs, controlled substances, narcotics or hallucinogens except when prescribed in the treatment of the employee by a physician or dentist. When dangerous drugs, controlled substances, narcotics or hallucinogens are prescribed for use during work hours, the employee shall notify his supervisor.
- e. An employee shall not have a detectable level of dangerous drugs, controlled substances, narcotics or hallucinogens in his urine or blood stream, except pursuant to a valid personal prescription.

Violation of these Personnel Policies and Procedures will subject the employee to disciplinary action, which could include dismissal.

- 7.2 An employee identified under Section 5, except for those taking required physicals, will be immediately removed from his position, placed on administrative leave with pay pending the outcome of the investigation, and required to submit to testing for drug and alcohol use. Prior to the testing, employees will be required to sign a consent form.
- 7.3 An employee who refuses to consent or submit to testing, makes himself unavailable for testing or disobeys an order related to testing will be subject to disciplinary action, which could include dismissal.
- 7.4 If an employee's drug or alcohol test results in a positive finding, he will be:
 - a. Referred to the Employee Assistance Program and placed on Administrative Leave with Pay for the initial EAP visit(s), and/or

- b. Allowed to use accrued paid leave if he decides to seek medical treatment approved by the Director of Human Resources. If needed, a leave of absence may be granted at the discretion of the Department Head, and/or
- c. Subject to disciplinary action where appropriate.

- 7.5 If an employee's drug or alcohol test results in a positive finding, and he refuses to seek help and follow the recommendations of the Employee Assistance Program or medical treatment approved by the Director of Human Resources, he will be subject to disciplinary action, which could include dismissal.
- 7.6 If an employee's drug or alcohol test results in a positive finding, he will not be allowed to return to his position until he has passed a return-to-work drug and alcohol test.
- 7.7 An employee who is required to take a drug or alcohol test will have access to his test results.
- 7.8 Employees who are taking prescribed medication which may interfere with the safe performance of the job must furnish proof of a valid personal prescription to their supervisor. Employees

taking over-the-counter medicines which may interfere with the safe performance of the job must provide a list of these over-the-counter medicines to their supervisor. If the prescription or list has been given to the employee's supervisor in advance of a drug or alcohol test, the City of Duncanville will not take any action solely because of a positive test result due to the prescribed medication(s) or over-the-counter medicine(s) referred to above.

8. **Supervisor and Employee Training**

8.1 Supervisors will be trained:

- a. To recognize employees who appear unfit for duty because of drugs or alcohol and become familiar with the elements of a determination of reasonable suspicion.
- b. To effectively and appropriately intervene based on reasonable suspicion.
- c. To identify basic categories of drugs and their effects.
- d. To understand the methods of drug and alcohol testing procedures.
- e. To effectively and appropriately document reasonable suspicion cases.

- f. To appropriately refer employees to the Employee Assistant Program.
- g. To understand related discipline provisions of the policies and procedures manual.

8.2 Employees will be trained:

- a. In how to access the Employee Assistance Program.
- b. In how the City of Duncanville policies regarding drug and alcohol use are applied in the workplace.
- c. In the effects and consequences of drug or alcohol use on personal health, safety and work environment.
- d. In the recognition of behavioral cues that may indicate drug or alcohol use and abuse.

9. Procedure for Testing Employees

9.1 A supervisor who concludes that testing is appropriate under Section 5.2 or 5.3 will:

- a. Prohibit the employee from working or continuing to work.
- b. Notify a Department Head, Assistant Department Head, Deputy Police Chief, Assistant Fire Chief, Police Lieutenant, Fire Battalion Chief, or Division Manager. The

employee may not be subject to testing without confirmation by one of those listed above.

- c. Transport the employee to the designated medical facility identified by the City of Duncanville for drug or alcohol testing. After testing, arrangements should be made for transporting the employee to his residence or a place selected by a relative or friend of the employee. The supervisor must not allow the employee to drive or operate any motor vehicle at any time herein.
- d. Encourage the employee to voluntarily consult the Employee Assistance Program, if facts and circumstances warrant.
- e. Contact the Director of Human Resources, prepare the appropriate documentation, and take appropriate disciplinary action, if facts and circumstances warrant.

9.2 An employee who does not pass a confirmation drug or alcohol test may request a retest of the original sample. The employee's request must be in writing to his Department Head within thirty (30) days of his receipt of the drug or alcohol

test results. The employee may specify retesting by the same laboratory or by a second laboratory that is certified to perform drug or alcohol tests by the National Institute on Drug Abuse. The originating laboratory must follow the external chain-of-custody procedures outlined in the National Institute on Drug Abuse's mandatory guidelines for federal workplace drug testing programs when transferring the sample.

10. Responsibilities

10.1 Department Heads are responsible for:

- a. Coordinating with the Director of Human Resources the identification of jobs under Section 5 where applicants are subject to testing for drug and alcohol use.
- b. Notification to employees as specified in Section 7 and for training of supervisors and employees as outlined in Section 8.

10.2 Supervisors and managers are responsible for documenting poor performance, concluding whether testing is appropriate under Section 5.2 and 5.3, and carrying out the procedures outlined in Section 9 above.

Supervisors and managers are prohibited from demanding or encouraging drug or alcohol testing outside of the parameters as set forth in Section 5.

Anyone who violates these prohibitions will be subject to disciplinary action which could include dismissal.

10.3 The Human Resources Department is responsible for furnishing professional assistance to departments for Section 10.1 activities, receiving all test results from the designated laboratory and communicating the test results to the employee's Department Head.

10.4 The Employee Assistance Program is responsible for providing counseling and referral services as outlined in the City of Duncanville Personnel Policies and Procedures Manual.

10.5 The City of Duncanville designated medical facility is responsible for obtaining a signed consent form from the applicant or employee, for medical examination and collection of specimens necessary for drug and alcohol testing in a designated laboratory, for arranging transportation of the specimen to the laboratory

and for receiving test results in accordance with legally and medically approved procedures, methods and techniques. The medical facility will communicate the test results to the Director of Human Resources upon receipt from the laboratory.

10.6 The City of Duncanville designated medical facility is responsible for maintaining records of all examinations, tests and results in employee and applicant medical files and for ensuring privacy and confidentiality.

11. Disclosure of Test Results

All persons associated with the City's drug testing policy are prohibited from willfully disclosing test results to City employees who do not have a need to know or persons not eligible to receive test results under applicable law. Persons who violate these prohibitions will be subject to disciplinary action which could include dismissal.

SECTION III

DRUG TESTING-ADMINISTRATIVE NIGHTMARE

Thanks to the work of the nation's police chiefs over the past 15 years, police officers today enjoy a high level of esteem. We see increased professionalism in our forces, closer relationships with the community and rising respect and status for the individual officer.²³

But that esteem can be sharply eroded and these gains quickly lost when allegations are made that drug use may exist within the force. Police chiefs can be vulnerable unless they have taken reasonable precautions to ensure a drug-free work force.²⁴

Speculation about drug abuse can shatter the integrity of departments as well as the public respect and trust that the vast majority of officers have earned. Recognizing this fact, many police chiefs are moving to ensure and demonstrate that their departments are drug-free. These chiefs say they view new efforts, such as drug testing for officers, not as "admitting the department has a problem" but as part of their responsibility for ensuring a drug-free workplace and setting an example within their community.

The development of drug testing policies and the implementation of drug testing procedures involves a host of legal, ethical, medical and labor relations issues.²⁵

Major Findings

Further impetus has come from the International Association of Chiefs of Police (IACP), which recently developed a model drug testing policy for local police departments to consider in identifying and dealing with the use of illegal drugs by police officers. The policy calls for:²⁶

1. Testing applicants and recruits as part of pre-employment.
2. Testing current employees when documentation indicates employee is impaired or incapable of performing assigned duty.
3. Testing current employees on allegations of use, sale or possession.
4. Testing in narcotics, drugs or vice units.

Many police departments already have policies along these lines. The IACP endorsement of these steps may encourage other departments to take similar action to deal with employee drug abuse.²⁷

Newest and Critical Findings

The newest and most up-to-date research consists of information gathered by David Carter and Darrel Stephens in the Survey of Contemporary Police Issues: Critical Findings, April 1991, Michigan State University.

Carter and Stephens explored issues in police officer drug use, drug testing and policy issues related to personnel management of drug-abusing police officers. Since that work was published in 1988, issues of police drug abuse have continued to evolve. The following survey tables involve data related to employee drug use and reflects a contemporary picture of the problems and practices in America's law enforcement agencies. The research of critical findings in law enforcement drug abuse is most important to police administration.

Below you will find twelve tables of research. The data for this project was collected by a questionnaire mailed to the chief executive of all municipal, county, consolidated and state law enforcement agencies serving population of 50,000 or more or having 100 or more sworn officers. A total response rate of 74.4 percent was achieved with 520 agencies returning completed surveys.

The data presented in these tables are reported only in frequencies and percentages. Some questions were answered

by only a portion of the respondents because of "screening questions" which sought to distinguish between various policies and practices.

The reader may also note that in some tables the percentages do not add to 100 percent. This is the result of either rounding or in some instances, questions unanswered by the respondents. In other tables, the percentages may add to more than 100 percent. In these cases, respondents had the opportunity to check multiple responses.

Table 2
Drug Test Applicants for Sworn Positions

	Frequency	Percent
Yes	429	82.5%
No	91	17.5%

Table 2 shows 82.5 percent test applicants before being hired to a sworn position.

Table 3
Drug Test Officers on Reasonable Grounds

	Frequency	Percent
Yes	393	75.9%
No	125	24.1%

Table 3 shows 75.9 percent test officers on reasonable grounds (suspension).

Of the 265 agencies reporting that they discovered officers using drugs, 103 (39.3 percent) indicated that

marijuana was the most frequently abused drug with cocaine being the second most frequently abused drug (see Table 10). There were 225 agencies (43 percent) reporting that they had no known cases of officers abusing drugs.

Table 4
Mandatory Regular Drug Testing of Employee

	Frequency	Percent
Yes, random tests	107	20.7%
No, non-random test	33	6.3%
No	387	73.0%

Table 4 shows 73 percent do not mandatory use drug testing.

Table 5
Departments Philosophy for Mandatory Drug Testing

	Frequency	Percent
Tests to Identify Users	393	75.9%
Tests to Prevent Use	125	24.1%

Table 5 shows 75.7 percent test to identify drug users.

Table 6
Mandatory Drug Test After Serious Incident

	Frequency	Percent
Yes	158	30.9%
No	350	68.5%

Table 6 shows 68.5 percent do not use drug testing after a major incident.

Table 7
Who Conducts Drug Analysis of Samples

	Frequency	Percent
Department Lab	27	5.3%
Other Police Agency Lab	21	4.1%
Non-Law Enforcement Lab	36	7.1%
Contract with Private Lab	354	69.4%
Other	8	1.6%
Non Applicable	253	36.2%

Table 7 shows 69.4 percent conduct drug analysis with a private lab.

Table 8
Drug Rehabilitation Component of EAP

	Frequency	Percent
Yes	400	78.3%
No	60	11.0%
No EAP	51	10.0%

Table 8 shows 78.3 percent user drug rehabilitation.

Table 9
Disposition Policy for Officers Who have Used Drugs

	Term. Off.	Discipl. Short Of Termin.	Rehabi. Off.	Handle Case by Case	Dept. Has No Policy
Marijuana	41.0%	5.7%	5.7%	40.2%	7.1%
Dangerous Drugs	53.6%	3.0%	4.0%	31.7%	7.7%
Prescriptions	31.8%	7.0%	8.9%	44.5%	7.6%
Heroin	54.3%	2.4%	4.2%	31.5%	7.7%
Cocaine	53.7%	2.4%	4.6%	31.6%	7.6%
Amphetamines	42.5%	5.0%	5.8%	38.2%	8.3%
Barbiturates	41.4%	6.0%	6.0%	38.4%	8.2%
Steroids	21.7%	8.8%	6.4%	45.8%	17.1%

Table 9 shows officers who have used drugs. Heroin showed the highest usage with a 54.3 percent termination rate from police service.

Table 10
Most Frequently Abused Drugs Among Officers

	Frequency	Percent
Marijuana	103	39.3%
Cocaine	94	35.9%
Prescriptions	21	8.0%
Steroids	12	4.6%
Stimulants	6	2.3%
Depressants	4	1.5%
Dangerous Drugs	2	0.8%
Heroin	2	0.8%
Other	18	5.8%

Table 10 shows that marijuana was the most abused drug among officers at 39.3 percent and cocaine a close second.

Table 11
Officers Investigated for Drug Use
Over the Previous 12 Months

Number of Agencies	Number Officers Investigated
61	1
38	2
19	3
12	4
6	5
3	6
3	7
2	8
3	10
1	11
1	15
1	20
1	47
1	100

Table 11 shows 61 agencies investigated one officer while one agency investigated one hundred officers in a 12 month period.

Table 12
Hiring Policies Related to Past Drug Use

<u>Applicants are Disqualified if They Have</u>	<u>Frequency</u>	<u>Percent</u>
Ever used drugs	35	6.7%
Experimented with marijuana	11	2.1%
Experimented with cocaine	101	19.4%
Experimented with hallucinogens	148	28.5%
Experimented with heroin	144	27.7%
Experimented with stimulants	58	11.2%
Experimented with depressants	58	11.2%
Disqualified on a case-by-case basis	242	46.5%

Table 12 shows 46.5 percent of surveyed agencies disqualified applicants on a case-by-case basis.

Drug use by a law enforcement officer could affect the success of an important law enforcement operation, and could pose risk of injury to other law enforcement officers working with him. Urinalysis drug testing is a method by which this interest can be protected.

Those positions which would impact upon public health and safety is incumbents were under the influence of drugs should be focused on drug testing programs. The issue of drug testing is certain to remain the subject of litigation and legislation at the federal, state and local levels.²⁸

SECTION IV

CONSTITUTIONAL ISSUES

The first constitutional issue certain to arise when a mandatory drug testing program is being developed involves the Fourth Amendment proscription against unreasonable searches and seizures. Is mandatory drug testing even a search within the meaning of the Fourth Amendment?²⁹

The Supreme Court has said that "[a] 'search' occurs when an expectation of privacy that society is to consider is infringed" by governmental action. Does a person, therefore, have a reasonable expectation of privacy in urine sufficient to prohibit the government warrantless inspection of it for the presence of an illegal drug? That question could be debated at length, but without practical effect, since there is another aspect of urinalysis which almost certainly implicates Fourth Amendment concerns.³⁰

That aspect is the act of urination which is considered by American society to be a private body function. The expectation of privacy which one possesses in the act of urination is almost certain to be recognized by the courts as reasonable. The 1989 rules (in 1991 the Supreme Court has not yet ruled on urination as part of drug testing procedure), the Supreme Court has clarified "some" of the

legal issues surrounding drug testing and have set standards which can be utilized by employers in formatting drug testing programs. Still outstanding is the issue of whether random drug testing is constitutional. Courts which have decided this issue have used the guidance provided by the Supreme Court and have looked at the specific occupations to be tested. It is recommended that employers design drug testing programs which are narrowly tailored in order to maximize the chance of prevailing if employees bring a lawsuit challenging the constitutionality of the program. Since the Fourth Amendment is intended to shelter those intimate activities from government interference or surveillance, a mandatory urinalysis drug testing program, which must concern itself with both compelled urination and inspection of a urine sample, will carry constitutional implications.³¹

Concluding that a mandatory urinalysis drug testing program by a law enforcement agency is a Fourth Amendment search does not mean that it cannot legally be implemented. The Fourth Amendment prohibits only unreasonable searches. The challenge to law enforcement, then, is to adopt a urinalysis drug testing program that can pass a reasonable test.³²

Fourth Amendment

What constitutes a reasonable or unreasonable search is not always easy to determine.

"The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search controls. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted."³³

In terms of a urinalysis drug testing program, the balancing test for Fourth Amendment reasonableness at the inception of the search requires the weighing of three factors; (1) the interests of the law enforcement officer who will be required to participate in the urinalysis program; (2) the interests of the law enforcement agency seeking to implement the program, and (3) the situations or circumstances under which the actual testing procedure will be implemented. Only if the interest of the law enforcement agency, in the context of the situation in which testing is proposed, outweigh the interests of the individual officers affected will the program be able to pass constitutional muster.³⁴

Individual Privacy

The first factor in the balancing test is the interest of the officers and officials who will be tested for drug abuse through urinalysis. That interest can be characterized simply as the fundamental right of "privacy and security of individuals against arbitrary invasions by government officials."³⁵

The right of privacy is the core value of the Fourth Amendment, encompassing both bodily integrity and private bodily functions.³⁶

Government Interests

The reasons upon which a law enforcement agency would rely to implement a drug abuse testing program will further validate societal, governmental and organizational objectives. At the same time, they also advance health and welfare interests important to the individual officers. Recognizing the dual benefits in these "governmental" interests demonstrates that a urinalysis drug testing program is not an attempt by law enforcement executives to test officers for drug abuse out of distrust, but rather to provide a better working climate within law enforcement departments and the communities they serve.³⁷

SECTION V

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Procedural safeguards which ensure that drug testing will be carried out in a reasonable manner should be clearly enumerated in a department's drug testing policy. Examples of the procedural safeguards found in court opinions include employee notification, chain of custody of the specimens, confidentiality of test results and right to appeal the findings. Since a positive finding may result in dismissal proceedings, these procedural safeguards must generally be consistent with the jurisdiction's regular administrative regulations, collective bargaining agreements, and where applicable, the police officer's bill of rights, used by police unions on the east coast (Union Tool).

Because of the limited litigation in the area of employee drug testing, many jurisdictions are proceeding cautiously in establishing and enforcing drug testing, policies and procedures. While departments recognize the need to act responsibly and fairly, they also realize that even successful litigations can be very expensive and time consuming. Police departments across the nation have a legitimate interest in detecting and deterring drug abuse among their personnel to prevent the corruption of their law

enforcement employees to the detriment of both the organization and society.

Drug testing in police departments is a "hot item" in the future of law enforcement. It is a controversial issue, a constitutional issue, public trust issue, moral issue and a civil liability issue. However, when handled by proper policy and procedure, all court requirements can be met.

Every law enforcement officer has a right to be secure in the knowledge that his/her partner, back-up officer and all responding fellow officers are capable of reacting in a safe and effective manner. This requires all law enforcement officers to be free from the restraints which drug abuse forces upon officers in terms of desire and willingness to enforce the laws of the United States of America.

APPENDIX A**ST. PAUL POLICE DEPARTMENT****Procedure:**

- A. All testing, pursuant to this policy, shall be conducted at the St. Paul Ramsey Medical Center (640 Jackson Street) under the auspices of the Occupation Health Services Office. Collection shall be done in such a manner as to preserve the dignity of the officer tested, ensure the integrity of the sample, and provide the highest possible accuracy of the clinical results.
- When an officer has, pursuant to Section I, been requested or ordered to submit to drug testing, the officer shall be transported to the testing site. There, the officer shall be asked to indicate what, if any, prescription and over-the-counter medications he or she has taken during the preceding 30 days. The information will assist the testing laboratory in interpreting the test results.
- The officer will next be asked to provide a urine sample. Each officer will be accompanied to a restroom by a supervisory officer or hospital

staff member of the same sex to ensure that no contamination or dilution to the sample occurs. Once obtained, the sample bottle will be capped and a tamper-proof seal placed over the cap. The officer will initial the paper label on the bottle and sign a "Chain of Custody" form indicating that the urine sample is his/her own and that the bottle was sealed in his/her presence. The supervisory officer will then certify on the "Chain of Custody" form the date that the urine sample was collected, that the sample was duly sealed and that the sample bottle bears the initials of the officer submitting the sample. The sealed sample bottle will immediately be placed under refrigeration pending actual laboratory analysis.

If an initial screen of an officer's urine sample tests negative for alcohol or drugs, the results will be reported back to the Department and the urine sample will be discarded. If the sample tests positive for alcohol or drugs, the urine sample will be immediately subject to confirmation testing. The specific confirmation test(s) will be determined by the specified drug that tested

positive in the initial screen. In those cases where the second test confirms the presence of an alcohol or drug in the sample, the sample will be retained in a locked freezer for six months to allow for further testing by the officer in case of a dispute.

Nothing in this policy shall be interpreted or construed to mean that an officer subject to testing may not obtain independent or alternative testing at his or her own expense and initiative. The following chemical substances will be tested for:

1. Alcohol - Ethyl
2. Cocaine
3. Marijuana (THC - Metabolite)
4. Amphetamines
5. Opiates

- B. The Inspection Unit Commander shall be responsible for selecting a date, twice each calendar year, in which the members of the Units identified in Section I A shall be notified of a CIRT or ODU call-up. Upon arrival at headquarters, the members responding shall be informed that the purpose of the call-up was to test their

judgement, fitness and readiness for duty and, as such, they are being asked to submit to drug and alcohol screening tests to be conducted.

- C. 1. If an officer has a reasonable basis to believe that another officer is illegally using drugs or on duty under the influence of drugs or alcohol, the officer shall notify the suspect officer's supervisor or Watch Commander, IMMEDIATELY, and furnish the name and current assignment of the suspected member, along with all of the facts and circumstances which led to the belief.
 - a. In all cases in which the belief that an officer is on duty under the influence of drugs or alcohol is based upon observations of the suspected officer, two (2) supervisory rank personnel are required to observe the suspected officer and concur that a reasonable basis exists to believe the officer is under the influence of alcohol or drugs.
- 2. Any supervisor or Watch Commander who is so informed of suspect illegal or improper drug or alcohol use shall notify the Division

Commander or, in his absence, the on-call Deputy Chief and advise the Deputy Chief of all facts and circumstances which led to the belief that the suspected officer is illegally using drugs or under the influence of drugs or alcohol.

- a. If the information is that the officer is currently on duty and under the influence of drugs or alcohol and the Deputy Chief agrees that the facts and circumstances to him are sufficient to provide a reasonable basis to believe that the officer is under the influence of drugs or alcohol, testing shall immediately be ordered and conducted.
- b. If the information is that the officer is not currently under the influence of alcohol or drugs, but that the officer is illegally involved in drugs or drug usage, an investigation to verify the facts or circumstance shall begin. Testing may or may not be included, dependent upon the course of the investigation. However, if testing is

4 ordered, it shall occur only if there is a reasonable basis to believe that the officer is involved in the usage of illegal drugs.

c. All personnel shall immediately document any and all information received, observations, and actions taken. All reports shall be forwarded to Internal Affairs. No copies shall be retained by another person or unit.

D. 1. Any officer who, as part of his police duties or through off-duty social contact, ingests either directly or indirectly any drug or narcotic substance that would or may test positive after drug screening, is required to document, as soon as possible thereafter, such contact. Documentation should occur on a case supplement or general information report if the contact occurred in an on-duty setting. Contact occurring through off-duty social activity should be documented on an internal memo to the Employee Assistance Program.

2. The results of all testing shall remain an administrative (i.e. non-criminal) matter. Data documenting negative test results shall be returned to the submitting officer.
3. Refusal to submit to testing may result in immediate discipline for refusal to obey a direct order.
4. An improper positive drug or alcohol screening, obtained pursuant to any portion to the above referenced policy, shall be considered a violation of General Order 230.20, Department Rules of Conduct, Number 5, 5(a), and/or other appropriate sections.
5. Data documenting positive test results shall be retained as part of the Internal Affairs file and handled consistent with such files.

APPENDIX B**BOSTON POLICE DEPARTMENT****Procedure:**

Sec. 1 This rule is issued to establish uniform internal policy and procedures to govern the administration of a screening process to test and control unauthorized use of illicit drugs among all sworn personnel of the Boston Police Department. The Department is seeking to test for drugs which have a high potential for abuse, have no medical use in treatment, and for which there is no safe protocol for medical use.

Sec. 2 This Rule is written and promulgated to be used in conjunction with Rule 102 governing the general conduct, duties and responsibilities of Boston Police Department personnel. It takes cognizance of the rights inherent in each individual of the Department under the Constitutions of the United States of America and the Commonwealth of Massachusetts.

It is established to help combat the national epidemic in the illicit use of drugs and to combat illegal trafficking in drugs. It is adopted to rationally foster the efficient operation of the

Boston Police Department and to establish a reasonable and uniform system by which the Department can monitor its sworn personnel for unauthorized drug use.

The Rule is necessary to preserve and protect the integrity of the Department and its personnel; to guard against the harmful consequences to the public good occasioned by the unauthorized unlawful use of, or the illegal trafficking in, illicit drugs by law enforcement personnel; and to preserve and maintain a high degree of public confidence in all those charged with upholding public order and public safety.

Sec. 3 The Department hereby establishes two base methods of implementing this rule to identify Department sworn personnel who are users of certain controlled substances:

- a. Testing of those individual subjects where facts are sufficient to constitute reasonable suspicion of controlled substance abuse as further described in Section 4, and;
- b. A universal random urinalysis procedure.

Sec. 4 In circumstances where the facts are sufficient to constitute a reasonable suspicion that a

department employee is a user of certain controlled substances, the Department shall have the right to require that the employee submit without delay to a urinalysis test.

Reasonable suspicion shall be based on information of objective facts obtained by the Department and the rational inferences which may be drawn from those facts.

The credibility of the sources of information whether by tip or informant, the reliability of the facts or information, the degree of corroboration, results of Department inquiry and/or other factors shall be weighed in determining the presence or absence of reasonable suspicion.

Sec. 5 There shall be a Drug-Testing Advisory Committee, members to be appointed by the Commissioner, which shall meet from time to time to advise the Commissioner on procedural and technical matters pertinent to the drug-testing program established by this rule.

The members of the Committee shall include a representative of each of the official collective bargaining groups representing sworn members of

the department; three or more medical specialists qualified in the various sciences pertinent to the conduct of drug-testing such as pharmacology, toxicology and pathology; and such other members as the Commissioner deems appropriate.

The Committee shall offer recommendations to the Commissioner on the procedures and mechanics of conducting a drug-testing program and on the science of drug-testing with a view to maintaining fairness, objectivity, accuracy and confidentiality in the entire drug-testing program. Also, the Committee shall make recommendations on the following:

- a. Changes and improvements in science and technology which will improve the effectiveness of laboratory testing for the detection of drug abuse among Department personnel.
- b. Appropriate external proficiency-testing and internal quality assurance procedures for evaluating the performance of drug-testing laboratories.

- c. Procedures for the certification, decertification, and recertification of laboratories for drug analyses.
- d. Recommendations to improve the effectiveness of the drug testing program.

Sec. 6 The employee-subject to be drug-tested will be selected by randomized independent computer process unless otherwise to be tested on a reasonable suspicion basis. The subject will be notified of the test requirement just prior to transport to the medical facility or laboratory designated by the Department to obtain the urine sample. At the time of the test the subject will be notified of the specific drugs which will be screened by the test. The subject will be accompanied by a Testing Officer from the Department assigned to supervise the taking of the urine sample and responsible for proper conduct and uniform procedures of urine sampling process. The subject will be assigned a test code-identification for purposes of maintaining anonymity and to assure privacy throughout the sampling and testing procedure. At the sampling site the subject will be required to deposit a

sample of urine into an approved container up to a required minimum quantity necessary for laboratory testing purposes. The subject will be required to thoroughly wash hands and fingernails prior to urination and shall be required to sign and certify Department documentation that the coded identification on the sample container corresponds with test code-identification assigned to him/her. From the point of embarking and at all stages of the urine-sampling procedure the subject will be under the direct supervision of the Testing Officer and is expected to follow strictly each instruction of the Testing Officer. Following the completion of the urine-sampling procedure, the subject will then be re-transported to his/her original point of departure.

Sec. 7 Testing Officers shall be appointed or assigned by the Commissioner from the Department with full authority to order personnel compliance to oversee the integrity of the Department's role in the personnel drug-screening process. They shall be responsible for the notification of the subject-employee of his/her random selection for

testing and of the specific drugs for the detection of which, the test will be administered. The Testing Officer shall be responsible for the attendance, identification and transportation of personnel to-be-screened to the designated test site at the appointed time and shall certify as to the cleanliness of the surroundings, the sterility of the sample and the integrity of the entire sampling procedures.

The Testing Officer shall supervise and observe in the company of the medical officer or technician all aspects of obtaining, marking and packaging of individual urine samples including the following:

- a. To assure that the medical officer or technician is afforded the cooperation of the subject in securing the urine sample from the subject in the necessary amount into the test container. Also, to oversee the securing and sealing of the individual urine sample containers of each subject employee; and
- b. The accurate matching of coded-identification of the subject with the sample and the containers including the seals and any packaging of the sample containers; and

- c. The exact completion and execution of the required legal documentation of chain-of-custody including appropriate identification and certification of medical or technical officer participating in obtaining the urine sample from the test subject and by bonded courier if so employed; and
- d. The proper maintenance of anonymity of the subject with the medical or technical officer conducting the urine-sampling procedure; and
- e. If necessary, to arrange for transport of the specimen by designated bonded courier to the testing laboratory if located elsewhere; and
- f. To arrange for the return transportation of the subject; and
- g. All other steps necessary for the purpose of maintaining absolute control and legal accountability from initial notification of the subject to the final marking, sealing, packaging and transport arrangements for the urine samples to the testing laboratory together with the accompanying chain-of-command documents, and the strict

maintenance and final delivery of accurate department ledgers and documents relating to the test, chain-of-command and tests records to the Commissioner or that person authorized by him to receive them; and

- h. To strictly apply all other more-detailed testing procedures as may be required by the Department prior to the effective date of actual testing.

Testing Officers shall attend an initial training seminar in the proper and legal administration of this personnel drug-testing rule prior to the start of actual testing and such other additional training seminars as changes and modifications in the program or procedures may require.

Sec. 8 Personnel Selection for Random Screening

The selective procedure will be governed by a secured computer selection process. The selection of individual personnel to-be-screened will be effected by a computer program designed for random selection. Human intervention in this process is limited to the programming of the computer by an independent contractor hired outside the

Department for the purpose according to contract specifications.

Sec. 9 Urine samples will be taken at a medical or laboratory site selected by the Department for this purpose. This facility may or may not be affiliated with the testing laboratory or facility which will be conducting the urinalysis process. This facility must provide a clean and sanitary location for the urine-sampling process including washing facilities. It must also provide a competent person qualified in the practice of sterile urine-sampling and experienced in the legal requirements of chain-of-custody documentation and procedures.

The person will be required to work cooperatively with the Testing Officer in obtaining from selected individuals under his/her direction urine samples in the required quantity, in proper receptacles for purposes of laboratory urinalysis for controlled substances, and to arrange for marking, sealing, packaging, storing and final delivery of such specimens to the testing laboratory.

All personnel selected to submit a sample for urinalysis shall be provided a private sanitary area at the collection center. The individual will be in a hospital-type gown and will not have access to street clothes, purses, bags, etc.

After providing the sample, the subject will call the testing officer or medical assistant. In the presence of the individual, the medical assistant will pour the sample into the plastic laboratory bottle; cap the bottle and place the tamper proof seal over the cap.

Sec. 10 Testing process of urine specimens of personnel shall be completed by a qualified medical laboratory selected by the Department which shall meet Department contract specifications which will ensure results are legally supportable and scientifically accurate.

With the delivery of each specimen, the Department will designate to the testing laboratory only certain specific drugs for which the specimen is to be analyzed. The testing laboratory will report findings only as to those specific substances contained in the Department request.

To ensure optimum accuracy, the tests shall be drug-specific. The drug-abuse screening test will consist of two tests:

- a. The initial test of each urine sample shall employ a methodology different from the secondary confirmation test.
- b. The initial test shall use a thin-layer chromatography process unless a different process has been approved by the Department. The test process at the laboratory for the initial analysis will be completed in 24-48 hours.
- c. The secondary confirmation test of any positive findings of specific drugs selected to be screened in the subject shall be accomplished by one of the following methods: enzyme immunoassay, gas liquid chromatography, mass spectrometry.
- d. The test procedure for determining the presence of cannabinoids will be immunoassay. Secondary confirmation test of a positive finding for the presence of cannabinoids will be gas chromatography-mass spectrometry.

- e. The foregoing drug-testing procedures are not meant to be an exhaustive compilation of the tests that will be or could be used to implement the personnel drug-screening program.
- f. The testing laboratory will make provisions to properly preserve, store and secure one aliquot of the original urine specimen to be reserved and made available for purposes of independent confirmation testing by experts chosen and authorized by the subject-employee. This employee-confirmation test will be conducted at the testing laboratory jointly with the experts representing the subject-employee and the laboratory chemists and experts of the testing laboratories which returned the original urine-test findings. Also, the testing laboratory will make available to the inspection of the employee or his representative all records of primary and secondary confirmation testing done by the testing laboratory on the urine specimen provided by the employee.

- g. The confirmatory test will be a test different from the initial test. The test will be gas liquid chromatography, mass spectrometry (GC/MS).

Sec. 11 The testing laboratory contracted by the Department to test urine specimens under this Rule must continue the uninterrupted chain-of-custody procedure from receipt of specimens and to maintain internal chain-of-custody procedures which establish fundamental accountability and reliability of testing from a legal viewpoint at each stage in the handling, testing, and storing of specimens and reporting of test results. The testing laboratory will be subjected to appropriate external proficiency-testing and internal quality-assurance procedures for evaluating the performance of its testing process and procedures and for strict conformity with the contract specifications. The testing laboratory will not be allowed to know the identity of the subject tested. Strict confidentiality must be maintained throughout the entire testing and reporting process. Results of the test will be sealed and forwarded only to the Commissioner or

that person authorized by the Commissioner to receive test results.

Sec. 12 Final scientific confirmation of the presence of one of the four harmful drugs (defined in the last sentence of Rule 111, section 1) in the urine sample of an employee shall set in motion the operation of Mass. General laws Chapter 31, section 41-46. These sections provide and protect the legal rights of tenured Civil Service employees. Under these provisions the employee is entitled to a full department hearing and a subsequent 'de novo' Civil Service hearing at which hearings he/she is afforded the opportunity to present a complete legal defense and exculpatory evidence and to contest all scientific and other evidence presented by the department pursuant to the complaints. The employee shall be charged under the general complaint of conduct unbecoming an employee (Rule 102, section 3) and the unauthorized use of illegal drugs (Rule 102, section 16) under Boston Police Rules and Regulations. The department shall bear the burden of proving the presence of illegal drugs in the

urine sample; and that the employee knowingly violated Regulations 102, sections 3 and 16.

A finding against the employee shall subject him/her to a full range of discipline under the Rules and Regulations of the Boston Police Department.

A finding for the employee shall constitute an exoneration of the employee.

Sec. 13 The provisions of this regulation are severable and if any of its provisions shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

APPENDIX C**DALLAS POLICE DEPARTMENT****Procedure:****1. Definitions**

- 1.1 **Alcohol** means alcohol or any beverage containing more than one-half of one percent of alcohol by volume which is capable of use for beverage purposes, either when alone or when diluted.
- 1.2 **Drug** means a controlled substance as defined by Section 1.02 of the Texas Controlled Substance Act and/or Section 202, Schedules I through V of the Federal Controlled Substance Act, including but not limited to marijuana, hashish, cocaine, heroin, morphine, codeine, opiates, amphetamines, barbiturates and hallucinogens.
- 1.3 **Reasonable suspicion** means a conclusion based on personal observation of specific objective instances of employee conduct, subject to corroboration and documented in writing, that an employee is unable to satisfactorily perform his job duties due to use of drugs or alcohol. Such inability to perform may include, but is not

limited to, a drop in the employee's performance level or by impaired judgement, reasoning, level of attention or behavioral change or decreased ability of the senses.

Physical characteristics indicating reasonable suspicion may be a pattern of abnormal or erratic behavior, physical symptoms (i.e., glassy or bloodshot eyes, slurred speech, unsteady gait, poor coordination or reflexes or direct observation of drug or alcohol use. Information provided by a reliable and credible source or possession of drugs or alcohol will constitute a basis for reasonable suspicion.

- 1.4 Safety sensitive positions means jobs where employee use of drugs or alcohol could create a threat to safety whereby the employee is unfit to perform assigned duties and the performance of those duties in such mental or physical condition creates or could create a safety hazard that has caused, or could cause injury or harm to the employee, or other employees or citizens or damage to property.

1.5 **Drug testing** means collection of a urine specimen by medical personnel and a laboratory analysis of that specimen by Enzyme Immunoassay (EMIT) screening and if appropriate, confirmatory testing using the Gas Chromatography/Mass Spectrometry (GC/MS) methods and procedures, or the most current and appropriate technology.

1.6 **Alcohol testing** means testing for blood alcohol content by a breathalyzer instrument device or drawing or collecting a blood or serum sample and laboratory analysis thereon.

2. **Applicants Subject to Testing**

2.1 The following classes of employees may be subject to testing:

- a. Public safety employees including sworn police and fire officers, warrant officers, uniformed public service officers and jailers
- b. Employees who routinely drive city vehicles or personal vehicles on city business.
- c. Employees who operate motorized equipment or who work in close proximity to or with moving machinery.
- d. Mechanics and maintenance workers.

- e. Trades and craft workers who use tools and/or machinery on the job.
- f. Employees on jobs where agility, mobility and sound judgement are imperative for safety in their jobs.

2.2 Safety sensitive jobs are identified in the attached addendum as those requiring excellent health (AC), laborers (LA), jobs requiring a high degree of agility and mobility (AI), moderate degree of agility and mobility (MO), primary drivers (DP), secondary drivers (DS), and special screening (SP). Administrative jobs (AD) are not safety sensitive.

3. Applicant Procedures and Notification

3.1 Applicants for safety sensitive positions for which physical examinations are required as listed in the attached addendum will be notified of the drug testing component of the examination at time of application. Applicants will be given the opportunity to withdraw their applications at that time or after receipt of results of the examination.

3.2 Applicants will be notified that if hired, they will be required to submit to drug or alcohol

testing as employees based on reasonable suspicion as defined in Section 4.3.

- 3.3 Refusal of applicants to subject to drug and alcohol testing as a component of the physical examination will be a bar to employment with the City for a period of one (1) year.
- 3.4 An applicant whose test results in positive findings will be rejected for employment for a period of one (1) year.
- 3.5 If an applicant is taking a medical prescription, the applicant must furnish a medical statement from a physician specifying the drug being taken. If this statement is submitted in advance of the drug test, positive test results may not be cause for rejection.
- 3.6 Applicants will be required to list all over the counter medicines being taken at the time of the drug test. Positive test results may not be cause for rejection.
- 3.7 Employees occupying safety sensitive positions who seek promotions or transfers into other safety sensitive positions will not be required to submit to drug testing.

3.8 Employees occupying non-safety sensitive positions who seek promotions or transfers into safety sensitive positions will be required to submit to drug testing as a regular component of the entrance physical examination for such position.

4. Employee Procedures and Notification

Employees will be notified that:

4.1 City rules and regulations prohibit the use or possession of drugs or alcohol while on duty or on City property or in a City vehicle and that violation of these rules and regulations will subject the employees to discipline, which could include discharge.

4.2 Based on reasonable suspicion, employees will be required to submit to testing for drug or alcohol use. Prior to such testing, employees will be required to sign a form consenting to testing. Failure or refusal to sign the consent form or to submit to testing will be cause for a charge of insubordination and will result in disciplinary action, which could include discharge.

4.3 An employee whose drug or alcohol test results in positive findings will be subject to disciplinary action, which could include discharge.

- 4.4 An employee assistance program, the City CARE Service is available to employees on a voluntary and confidential basis as prescribed in Administrative Directive 3-25.
- 4.5 Employees in positions outlined in Section 5.1 who are taking medical prescriptions must furnish a statement from a physician specifying the drug being taken and whether the drug will interfere with safe performance of the job. If the statement has been delivered to the employee's supervisor in advance of a drug test, a positive finding of the prescribed drug may not be grounds for discipline.

5. **Supervisor Training**

Supervisors will be trained:

- 5.1 To recognize employees when they appear unfit for duty because of drugs or alcohol and the elements of determination of reasonable suspicion.
- 5.2 To effectively and appropriately intervene in reasonable suspicion instances.
- 5.3 To identify basic categories of drugs and their effects.
- 5.4 To understand the methods of City drug and alcohol testing procedures.

5.5 To effectively and appropriately document reasonable suspicion cases.

5.6 In the City CARE Program.

5.7 In guides to discipline.

6. **Procedures for Testing Employees**

6.1 A supervisor who has reasonable suspicion to believe an employee has ingested, inhaled or injected a drug or has ingested an alcoholic beverage when reporting for or while on duty must:

- a. Prohibit the employee from working or continuing to work.
- b. Notify a department executive or division head and request a personal observation and review of specific objective instances of employee conduct to confirm that reasonable suspicion exists. The employee may not be subject to testing without the confirmation of reasonable suspicion by an executive or a division head.
- c. Transport the employee to the City Health Clinic, Room 100, 2014 Main Street, if between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday or if at another time,

to the designated medical facility identified by the City. After testing, arrangements should be made for safe transportation to the employee's residence or a place selected by a relative or friend of the employee.

- d. Prepare appropriate documentation and take appropriate disciplinary action.
- e. If facts and circumstances warrant, the employee may be encouraged to voluntarily consult the CARE Program Coordinator in the Personnel Department in addition to disciplinary action.

6.2 Supervisors are prohibited from demanding or encouraging drug or alcohol testing without reasonable suspicion. Willful disclosure of test results to persons not involved in the disciplinary procedure may merit appropriate disciplinary action which could include discharge.

7. Responsibilities

7.1 Department directors are responsible for:

- a. Identifying jobs under Section 5.1 where applicants are subject to testing for drug and alcohol use.

- b. Notification to employees as specified in Section 4 and for training of supervisors as outlined in Section 5.
- 7.2 The Personnel Department is responsible for furnishing professional aid to departments for Section 7 activities.
- 7.3 The Personnel Department CARE Program is responsible for providing an employee assistance program as specified in Administrative Directive 3-25.
- 7.4 The Personnel Health Clinic, or an after hours designated medical facility, is responsible for obtaining a signed consent form from the applicant or employee, for medical examination and collection of specimens necessary for drug and alcohol testing in a designated laboratory, for arranging transportation of the specimen to the laboratory and for receiving test results in accordance with legally and medically approved procedures, methods and techniques. Test results will be communicated to approved departmental personnel immediately upon receipt from the lab.

- 7.5 The Personnel Health Clinic is responsible for maintaining records of all examinations, tests and results in employees medical files and for insuring privacy and confidentiality. Willful disclosure of test results to unauthorized persons may merit appropriate disciplinary action which may include discharge.
- 7.6 Supervisors and managers are responsible for documenting poor performance, for recognizing reasonable suspicion of drug or alcohol use by employees and for carrying out procedures outlined in Section 6 above.

Legal References

Texas Controlled Substance Act

Federal Controlled Substances Act, 21 U.S.C. 812

City of Dallas Personnel Rules, Section 34-36 (b) (11)

Drug Free Workplace Act of 1988, Public Law 100-690 (1988)

SECTION VII
ENDNOTES

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²J.K. Stewart, Research in the Fight in the War Against Drugs, National Institute of Justice/National Criminal Justice Reference Service, Rockville, MD., 18, Microfiche

³Thomas McEwen, Barbara Manili, and Edward Commons, "Employee Drug Testing Policies in Police Department", The TMPA Quarterly, Vol. 5, No. 19 (November 1990): 61-62

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⁶Ibid., 62.

⁷Ibid., 63.

⁸Ibid., 62.

⁹Ibid., 63.

¹⁰B. Webster and J.G. Brown, "Drug Testing by Design", State Peace Officers Journal, V39 (January 1990): 99.

¹¹Ibid., 100

¹²Ibid., 103.

¹³Ibid., 105.

¹⁴Jeffrey Higginbotham, "Urinalysis Drug Testing Programs For Law Enforcement", Legal Digest, October 1986, 25.

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¹⁷Ibid., 113.

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²⁹Jeffery Higginbotham, "Urinalysis Drug Testing Program for Law Enforcement", Legal Digest, October 1986. 26.

³⁰Ibid., 27.

³¹Ibid., 27.

³²Ibid., 29.

³³Ibid., 30.

³⁴Ibid., 31.

³⁵Ibid., 33.

³⁶Ibid., 34.

³⁷Ibid., 36.

SECTION VIII

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