

# South Carolina Department of Public Safety



Office of the Director

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<b>POLICY</b>	<b>200.04</b>
<b>EFFECTIVE DATE</b>	<b>SEPTEMBER 28, 1994</b>
<b>ISSUE DATE</b>	<b>JUNE 22, 2011</b>
<b>SUBJECT</b>	<b>ALCOHOL AND DRUG DETERRENCE PROGRAM</b>
<b>APPLICABLE STATUTES</b>	<u>Section 802(6) of Title 21 of the United States Code;</u> S.C. Code of Laws
<b>APPLICABLE STANDARDS</b>	<u>22.2.3, 22.2.6, 26.1.1, 52.2.6</u>
<b>DISTRUBTION</b>	<b>TO ALL EMPLOYEES</b>

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## **I. PURPOSE**

The purpose of this policy is to provide all Department of Public Safety employees with notice of the implementation of the department's alcohol and drug deterrence program. [26.1.1] [52.2.6 (a)]

## **II. POLICY**

The critical mission of law enforcement requires the maintenance of an alcohol and drug free work environment. The most effective method for deterring alcohol abuse and illegal drug usage by our employees is through the institution of a comprehensive testing program.

A law enforcement agency has several uniquely compelling interests that justify the use of employee testing. The public has the right to expect that those sworn to serve the public in a law enforcement capacity are at all times both physically and mentally prepared to fulfill those duties. The use of illegal drugs and the abuse of alcohol have been shown to seriously impair an individual's physical and mental health, dramatically affecting on the job performance. As a law enforcement agency, it is imperative that all employees of the department remain free from the effects of alcohol and illegal drugs to guarantee the readiness of our personnel.

Because department law enforcement officers rely on non-commissioned personnel to perform critical support duties, all department employees may be subject to the provisions of this policy. The director shall designate those positions occupied by non-commissioned personnel which will be subject to random drug testing. The testing of non-commissioned personnel guarantees that those employees whose judgment is

impaired by the use of illegal drugs or abuse of alcohol shall not be in the position to risk the life of an officer or to otherwise fail to support officers in the field.

Therefore, in order to ensure the integrity of the department and to preserve public trust and confidence in a fit and drug-free law enforcement profession, the department will maintain a drug deterrence program to detect prohibited drug use by employees.

### III. TERMS AND TYPES OF TESTING

#### A. Definitions

1. **Abuse of Prescription Drugs** - A controlled substance included in Schedule III, IV or V, as defined by Section 802(6) of Title 21 of the United States Code but used in an unauthorized manner.
2. **Alcohol Test:** The submission of a breath sample for alcohol analysis. Alcohol testing may also include the submission of a blood sample.
3. **Applicant** - Any individual who seeks to become or is otherwise tentatively selected by the department to become an employee of the department.
4. **Commissioned Personnel** - Employees of the department who have been vested with law enforcement authority.
5. **Drug Test** - Compulsory production and submission of a urine specimen by an employee or the drawing of a blood sample from an employee for chemical analysis to detect prohibited drug use.
6. **Employee Assistance Program** - The department or state counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment. [22.2.6 (d)]
7. **Illegal Drug** - A controlled substance included in Schedule I or II, as defined by Section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
8. **Medical Review Officer** - A licensed physician with knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.
9. **Random Drug Testing** - A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform-unannounced testing of all designated employees occupying a specified area, unit or position, or may be a statistically random sampling of such employees based on neutral criteria.
10. **Reasonable Suspicion** - The quantity of proof or evidence which is more than a hunch but less than probable cause. Reasonable suspicion must be based upon objective facts and observable phenomena which would lead a reasonable person to suspect that the individual is under the influence of an illegal drug or alcohol. Hearsay may be an acceptable basis for establishing reasonable suspicion.

11. **Supervisor** - Department employee having authority to direct the work of, assign tasks to, or impose approved discipline upon, department subordinates.
12. **Testing-Designated Positions** - Positions occupied by law enforcement personnel and non-commissioned employees of the department designated by the director for random drug testing.
13. **Verified Positive Test Result** - Test result that has been screened positive by an approved immunoassay test, confirmed by a Gas Chromatography-Mass Spectrometry assay or other confirmatory tests approved by the department, evaluated by the Medical Review Officer and determined to be unsupported or unjustified by any valid prescription or other authorized medical use.

B. Types of testing

This program shall include the following types of testing:

1. Applicant testing;
2. Random drug testing; [52.2.6 (a)]
3. Reasonable suspicion testing; [52.2.6 (a)]
4. Accident or unsafe practice testing; and [52.2.6 (a)]
5. Testing as part of, or as a follow-up to, rehabilitation. [52.2.6 (a)]

**IV. DRUG DETERRENCE OFFICER:**

The Director of the Department of Public Safety will designate a department employee as Drug Deterrence Officer (DDO). The DDO is responsible for administration of the Drug Deterrence Program (DDP) and may act as the director's designee in DDP matters.

**V. FINDING OF DRUG USE, ABUSE OF PRESCRIPTION DRUGS OR ALCOHOL AND DISCIPLINARY ACTION**

A. Determination

An employee shall be found to have violated this policy on the basis of any appropriate evidence including, but not limited to:

1. Direct observation;
2. Evidence obtained from an arrest or criminal conviction;
3. A verified positive test result;
4. An employee's voluntary admission, or
5. An employee's refusal to submit to testing as required in this policy, including adulterating, substituting or tampering with a urine specimen.

B. Disciplinary Action

The severity of the disciplinary action taken against an employee found to be in violation of this policy shall depend on the circumstances of each case and any action will be implemented in accordance with the department's Disciplinary Action Policy (Policy 400.08) including termination from employment.

An employee shall be disciplined and may be terminated for refusing to take the drug test when required and for attempting to alter or substitute the specimen provided.

Any applicant who refuses to be tested shall be deemed ineligible for the position.

Failure to produce a urine specimen after a reasonable time allotment of three hours with reasonable fluid ingestion may be considered a refusal to submit to drug testing and will be subject to disciplinary action." unless subject to a confirmed medical condition" in which case, there would be no disciplinary action for failing to produce urine specimen. We may consider alternate test such as "hair" test for these medical cases.

## **VI. DRUG AND ALCOHOL TESTING – GENERAL**

- A. Drug tests are used for random and reasonable suspicion testing of employees along with applicant screening. Alcohol tests are only used for reasonable suspicion testing of employees. A drug test may also be required for certain internal transfers.
- B. Urine samples will be used for drug tests and breath samples for alcohol tests. The director or collection official may elect to disregard an improper sample or require another sample. If the collection of the specified sample type is not possible, the director or his designee may authorize the acceptance of blood samples.
- C. No employee will ingest any illicit drug. If applicable, employees will have prescriptions for other ingested drugs. In addition, no employee will ingest any drug in amounts beyond the prescribed or recommended dosage.
- D. Any person, whether employee or not, utilized by the department to drive commercial vehicles may be subject to additional drug and alcohol testing as dictated by state and federal laws and regulations.
- E. Any independent test requested by the employee or applicant is his responsibility to obtain after the department's testing is finished. However the results of any independent test will not be considered by the MRO in making the test verification determination.

## **VII. SUPERVISORY NOTIFICATION**

- A. An employee will notify his supervisor when required to use drugs which he has been informed may impair job performance. If appropriate, the employee may be temporarily reassigned or to take leave.
- B. An employee, who unintentionally ingests or is made to ingest a drug, will immediately report the incident to his supervisor.
- C. An employee having a reasonable basis to believe another employee is engaging in prohibited use of drugs (including alcohol) will immediately report the facts and circumstances to his supervisor.

## **VIII. RANDOM DRUG TESTING**

### **A. Notification of Selection**

An individual selected for random drug testing, and the individual's first line supervisor shall be notified the same day the test is scheduled, preferably within two hours of the scheduled testing.

## B. Deferral of Testing

An employee selected for random drug testing may obtain a deferral of testing if the employee's first-line and second-line supervisors concur that a compelling need necessitates a deferral on the grounds that the employee is:

1. In a leave status (sick, annual, administrative, or leave without pay);
2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification;
3. Under subpoena to testify in a court proceeding during the time of the scheduled testing; or
4. Other compelling circumstance as determined by first line or second line supervisor.

An employee whose random drug test is deferred will be subject to an unannounced test at a later date. Any deferral by a supervisor is to be communicated to the Drug Deterrence Officer.

## C. Implementing Random Drug Testing

All employees in testing designated positions shall be placed in a pool of employees subject to mandatory random testing

The DDO, after consultation with the director, will determine the frequency and timing of tests. The selection process will be random. The DDO will determine the selection percentage for each testing day. At least one random testing day will be conducted during each calendar year.

The director reserves the right to increase or decrease the frequency of random testing based upon the department's mission, need, availability of resources, and experience. The director shall also ensure that the means of random selection remain confidential.

## IX. REASONABLE SUSPICION TESTING (Drug and Alcohol) [52.2.6 (a)]

### A. Grounds

Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena, such as direct observation or possession 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-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, distribution or trafficking;
4. Information provided either by reliable and credible sources or independently corroborated; or
5. Newly discovered evidence that the employee has tampered with a previous drug test.

The director or his designee may order an employee take a drug or alcohol test upon reasonable suspicion of prohibited activity. The employee will be advised verbally of

the justification prior to the testing. A written summary will be sent to the employee within three working days after the test is given.

For reasonable suspicion drug testing, the scope of the analysis may be expanded beyond the range for random and applicant testing.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard. Hearsay is an acceptable basis for reasonable suspicion.

**B. Documentation**

If any employee is suspected of using illegal drugs or abuse of alcohol, the supervisor will immediately gather all information, facts and circumstances leading to and supporting the suspicion. The supervisor shall promptly detail, for the record and in writing, the circumstances forming the basis for the testing. The supervisor will forward as quickly as possible the finding to the director or the DDO who shall approve the finding and order the testing. The supervisor's written report shall become part of the file created and maintained by the director or the DDO for each reasonable suspicion test ordered. [22.2.6 (f)]

**X. ADDITIONAL TYPES OF DRUG TESTING [52.2.6 (a)]**

**A. Applicant Testing**

To maintain the high professional standards of the department's workforce, it is imperative that applicants for testing-designated positions who use illegal drugs be screened out during the initial employment process before they are placed on the employment rolls of the department. Applicant testing will have a positive effect on reducing instances of illegal drug use by employees working in critical areas of the department and will provide for a safer work environment.

To this end, every vacancy announcement for positions designated for applicant testing shall state:

"All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment."

Each applicant will be notified that appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement will not preclude applicant testing.

This requirement does not apply to internal commissioned candidates who are already subject to testing unless the Director deems such testing of internal candidates to be necessary. Non-commissioned personnel who apply for a vacant testing-designated position shall be subject to applicant testing.

**B. Accident or Unsafe Practice Testing [52.2.6 (a)]**

The department is committed to providing a safe and secure work environment for all employees. Both commissioned and non-commissioned 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 alcohol and drug testing. Based on the circumstances of the accident or unsafe act, the director may initiate testing, particularly where the accident or unsafe act results in death or injury

requiring hospitalization, or where damage to government or personal property is sustained.

### C. Follow-up Testing

All employees who undergo counseling or participate in a rehabilitation program for drug or alcohol abuse will be subject to unannounced, periodic testing upon their completion of the treatment program and their return to duty. The frequency and duration of follow-up testing shall be determined by the rehabilitation professional or employee assistance program professional. A verified positive result after completion of a rehabilitation program shall result in termination from employment with the department.

## XI. DRUG TEST PROCEDURES [52.2.6 (a)]

### A. In General

The initial test performed by the laboratory will be a sensitive, rapid and inexpensive immunoassay screen to eliminate "true negative" specimens from further consideration. For specimens initially testing positive, a second analytical procedure will be employed to identify the presence of a specific drug or metabolite. This confirmatory test will be a gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/tandem mass spectrometry (LC/MS/MS) procedure; the testing will detect the following drugs and/or their metabolites: cocaine, marijuana, opiates, amphetamines, and phencyclidine (PCP).

In order to ensure the full reliability and accuracy of drug tests, the accurate reporting of test results, and the integrity and efficacy of the Department of Public Safety's drug deterrence program, the director may make changes to this policy and these testing procedures to reflect improvements in the available science and technology. Failure to make such changes to the policy before the actual use of an improved drug test shall in no way invalidate the use of the improved test or its results.

The department's drug deterrence program shall utilize professionally trained collection personnel and a certified laboratory with rigorous analytical standards and quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

### B. Specimen Collection Procedures

1. After consultation with the director, the DDO will be responsible for selection of a suitable collection facility and personnel.
2. Each step in the collection of the samples will be documented to ensure procedural integrity and proper chain of custody.
3. If necessary, collection personnel will require positive identification from each employee or applicant prior to testing.
4. Collection personnel are responsible for providing collection area security and reasonable privacy to the employee or applicant.
5. Upon request by the collection personnel, the employee or applicant will remove any bulky or unnecessary clothing.

6. The employee or applicant will be permitted no more than three hours to give a sample unless the director, his designee, or DDO authorizes additional time. When the employee or applicant appears unable or unwilling to provide a urine sample, testing personnel will notify the DDO. Reasonable amounts of water (up to 40 ounces) or other acceptable liquids may be given to encourage the production of a urine sample.
7. A minimum of 45 milliliters is a sufficient sample.
8. A split collection process will be used. The collector shall pour the urine specimen into two specimen containers, labeling and sealing each one. Both specimen containers are submitted to the laboratory. The laboratory will conduct all analyses only on the primary specimen, maintaining the split specimen in secure refrigerated storage at the laboratory. The split specimen will be made available for reconfirmation testing at a second certified laboratory at the request of the applicant or employee.
9. Specimen samples will be sealed and labeled by collection personnel in the presence of the donor. The donor will initial or sign the evidence tape used to seal the sample.
10. If collection personnel suspect an employee or applicant may have altered or substituted a urine sample, a second sample may be obtained immediately, with collection personnel of the same sex as the employee or applicant inside the bathroom area. This observation may be accomplished by the presence of collection personnel in reasonable proximity to the employee or applicant.

C. Failure to Appear for Testing

Failure to appear for testing without a deferral will be considered refusal to participate in testing and will subject the employee to disciplinary action, including termination.

D. Medical Officer Review

When a confirmed positive result has been reported by the laboratory the Medical Review Officer shall contact the employee by telephone and confidentially discuss any medications taken that might have affected the urine sample. The Medical Review Officer shall review all medical records made available by the employee and advise the director whether a confirmed positive test could have resulted from legally prescribed medication. The employee may be required by the director to submit additional evidence to justify a confirmed positive drug test result, including, but not limited to:

1. A valid prescription; or
2. A letter from the individual's physician verifying a valid prescription.

If there is no justification for the positive result, then such result will be considered a verified positive result under this policy and appropriate disciplinary action shall be implemented.



#### E. Types of Drugs for Which Employees Shall Be Tested

The department reserves the right to test for the presence of any controlled substances specified in Schedules I through V, as defined in 21 U.S.C. § 802(6) and listed in Part B, Subchapter 13 of Title 21 of the United States Code. However, employees shall be tested most often for the following types of drugs:

1. Cocaine
2. Amphetamines
3. Opiates
4. Marijuana
5. Phencyclidine (PCP)

#### F. Drug Testing Laboratories

1. The DDO will be responsible for selection of a suitable laboratory. Any external laboratory conducting analyses must be certified by Substances Abuse and Mental Health Services Administration (SAMHSA) or other body approved by SLED. Also, the SLED Forensic Laboratory may conduct any analysis requested by the director or his designee.
2. Appropriate chain of custody procedures will be utilized.
3. The DDO will select testing panels. Typically, random and applicant testing will involve commonly abused drugs.
4. A Medical Review Officer (MRO) will review any positive confirmatory results.

#### G. Drug Testing Methodology

1. Initial screening test(s) may be performed. If these results are "negative", no further testing is typically required. If these results are "positive" a "positive" confirmatory test is required before the results are considered final.
2. A confirmatory test will be a gas or liquid chromatography/mass spectrometry test or other appropriate methodology. If confirmatory test results are obtained, these results are considered final results regardless of any screening test results.
3. If a sample test is verified "positive", the split sample may be forwarded for analysis to a department designated second laboratory, at the request of the employee. If these results are "negative," the final result is a cancelled test.
4. Drug test records in the department's possession will be stored in a secured area and retained in compliance with applicable record retention guidelines.

#### H. Sample Retention:

After a "positive" result on a confirmatory drug test, any remaining sample, including the split specimen will be retained in refrigerated or frozen storage for not less than 60 additional days. The testing laboratory or other SLED approved entity may maintain the remaining sample. If the urine sample is analyzed "negative", no further retention of either sample is required. No sample retention is required for breath alcohol testing.

## **XII. CONFIDENTIALITY OF RECORDS AND REPORTS**

The results of a drug test of a department employee may not be disclosed without prior written consent of the employee unless disclosure would be: [22.2.6 (c)] to the Medical Review Officer; to the EAP Administrator where the employee is receiving counseling or treatment or is otherwise participating; [22.2.6 (c)], to any supervisory or management official within the department having authority to take disciplinary action against the employee; or required by law or pursuant to a valid court order.

## **XIII. ALCOHOL TESTING**

Any department employee while on-duty or while operating a government vehicle shall refrain from the consumption of alcoholic beverages. Any on duty employee who exhibits symptoms of being under the influence of alcohol may be ordered by the departmental head to take an evidential breath alcohol test or to provide a blood sample for testing. The level of alcohol concentration in the breath or blood sample shall be reported to the departmental head for implementation of appropriate disciplinary action according to the department disciplinary policy. An employee shall not have an alcohol level equal to or greater than 0.02 grams of ethanol per 100 ml of blood or 0.020 grams ethanol, per 210 liters of breath.

Any supervisor who has reason to believe that an employee's off-duty abuse of alcohol is resulting in excessive absenteeism, tardiness, or declining work performance shall counsel that employee and refer that employee to the Employee Assistance Program. (Policy 200.23) [22.2.3] [22.2.6 (e) (f)]

## **XIV. NOTICE**

The issuance of this policy and its distribution to all employees shall serve as a general notice to all employees that the testing program will be implemented no earlier than sixty (60) days after distribution of the policy. Each employee shall be provided with a copy of this policy.

In addition to the general notice to all employees, employees occupying designated testing positions will be notified that the employee's position will be subject to testing and after initial testing will be subject to random testing thereafter.

Each employee in a designated testing position shall be asked to acknowledge in writing that:

The employee has received and read the notice which states that the employee's position has been designated for random drug testing; and that refusal to submit to testing will result in disciplinary action, including termination from employment.

If the employee refuses to sign the acknowledgment, the employee's supervisor shall note on the form that the employee did receive a copy of the notice. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of the testing procedures.

<b>By Order of the Director</b> <b>Date: June 22, 2011</b>
<b>Mark A. Keel</b>
<b>Director</b> <b>S C Department of Public Safety</b>
<b>The Original Signed Copy of this Policy</b> <b>is on File in the Office of the General</b> <b>Counsel</b>